

CMS Freedom of Information Act (FOIA) Policy and Procedural Instructions

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10 - Purpose

This instruction describes the Centers for Medicare & Medicaid Services' (CMS) policies and procedures for administering the Freedom of Information Act (FOIA) (5 U.S.C. 552). It also conforms to and delineates the Department of Health and Human Services (DHHS or Department) FOIA regulations published in the Federal Register by the Office of the Assistant Secretary for Public Affairs on November 25, 1988.

20 - Policy

This instruction describes CMS' policy and procedures for administering and implementing FOIA. It supplements and is in full compliance with the Department's FOIA Regulations (45 CFR Part 5) and the CMS FOIA Regulations at 42 CFR 401.101 et seq. (Please see Internet links below at Section 30.1).

Any instructions to CMS components not in compliance with this issuance are hereby superseded. All supplements to this issuance must be cleared by the Director, Division of Freedom of Information (DFOI), in order to ensure uniformity of procedures, as well as consistency with the law and regulations.

30 - General Information

30.1 - AUTHORITIES

- A. Freedom of Information Act (FOIA), 5 U.S.C. 552
<http://www.usdoj.gov/oip/foiastat.htm>
- B. Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pub. L. No. 104-231, 110 Stat. 3048 (codified throughout 5 U.S.C. 552)
- C. Open Government Act of 2007 and Open FOIA Act of 2009
<http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>
- D. Office of Management and Budget (OMB), December 8, 2009 Memorandum M-10-06, Open Government Directive
http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf
- E. Executive Order No. 12600, "Predisclosure Notification Procedures for Confidential Commercial Information" (July 23, 1987)
<http://www.archives.gov/federal-register/codification/executive-order/12600.html>
- F. Department of Health and Human Services FOIA Regulations, 45 CFR, Part 5
<http://www.hhs.gov/foia/45cfr5.html> (Section 5.31 of the regulation defines the authority of the FOIA Officers within the HHS agencies).
- G. CMS FOIA Regulations at
http://www.access.gpo.gov/nara/cfr/waisidx_10/42cfr401_10.html

REFERENCES

- A. CMS FOIA Internet Web Site: <http://www.cms.gov/foia/>
- B. "Freedom of Information Act Guide & Privacy Act Overview," U.S. Department of Justice, 2009 edition, http://www.justice.gov/oip/foia_guide09.htm
- C. U.S. Department of Justice Web Site: www.foia.gov

30.2 – Scope of the FOIA

The FOIA gives the public the right to request existing records held by the Executive branch of the Federal government, subject to the nine Exemptions to disclosure. Historically, CMS has only invoked six of those Exemptions, which are listed and described in Section 30.9.

The FOIA pertains to records (paper or electronic) only. It does not cover information which may be requested and imparted orally or in writing.

The FOIA does not require an agency to perform research to answer questions, when an agency record or document does not exist that contains the requested information. For example, requests for dates, addresses, or statistics such as the Medicare enrollment for a State, which need not be responded to with the production of a document, should not be handled as FOIA requests. Such requests should be directed to the proper CMS public inquiries office.

Similarly, coverage inquiries by providers may not always be best resolved through the FOIA. They may often be handled more appropriately through the CMS provider relations office or its equivalent.

Materials Not Subject to the FOIA: The FOIA does not apply to materials specifically prepared for public distribution or sale, e.g., press releases, speeches, fact sheets, information brochures, or any publication which has been assigned a CMS, DHHS, Government Printing Office, or National Technical Information Service (NTIS), publication number, etc.

The Department FOIA regulations at 45 CFR § 5.22, state that the Department will not handle a request under their FOIA regulations “to the extent it asks for records that are currently available, either from HHS or from another part of the Federal government, under a statute that provides for charging fees for those records.” Under the Social Security Act, Section 1106(b) (42 U.S.C. § 1306(b)), the agency may charge the cost for furnishing information. Additionally, the Freedom of Information Act at 5 U.S.C. § 552 (a)(2) states that an agency is not required to make certain records available for public inspection and copying, specifically records which have been promptly published and offered for sale.

Written/Oral Requests

FOIA requests should be submitted in writing, for copies of existing records. Requests must "reasonably" describe the requested records. Requests do not have to be designated or labeled as a “FOIA request.” In highly unusual circumstances, the CMS FOIA Officer may accept oral FOIA requests, which subsequently must be put in writing by the CMS FOIA officer or his designee, and confirmed by the requestor.

Revised 01/24/12. Note: This version supersedes the February 2005 base manual, the May 2010 revisions, and any other versions.

30.3 - Required Signatures and Requestor Contact Information

Although it is not always necessary for a FOIA request to bear an actual signature, the name of the individual submitting and sending the request must be provided. The name of a business entity alone is not sufficient; CMS requires that we have the contact information of an individual at the requestor's organization. If a FOIA request does not contain the name of an individual who may be contacted regarding the request, do not process the request and close the request out administratively. Send a letter to the requestor, advising that he/she may resubmit a new request to CMS which provides the required contact information. This applies to FOIA requests received by the CMS Division of Freedom of Information (DFOI) in the Baltimore Central office, and to requests received directly by regional office FOIA coordinators and CMS contractors.

For requests that seek records of individuals which are contained in Privacy Act systems of records, CMS requires a signature on the request letter.

30.4 - Creation of Records

As stated previously in Section 30.2, the FOIA allows the public to request existing agency records. The FOIA does not require that new records or documents be created to respond to requests.

However, the FOIA does require that agencies search for existing discrete records, whether those records are in electronic form or hardcopy. In the case of conducting an electronic records search, it is not considered creating a new record if a program is created by the agency to search the electronic records in its possession.

Additionally, deleting non-releasable data, or data not within the scope of the request, from an existing record is not considered creating a record. This applies even if, for the agency's administrative convenience, CMS chooses to write a new program to edit the existing record, rather than editing the record manually.

Should CMS issue a response informing a requester that a requested record does not exist within the agency, such a response is not a denial, but still is considered an adverse determination. Therefore, all such "No Records" responses should include notification of appeal rights within the body of the letter. (Please see Section 30.11, Administrative Appeals).

Revised 01/24/12. Note: This version supersedes the February 2005 base manual, the May 2010 revisions, and any other versions.

30.5 - Time Frames for FOIA Processing

The Act establishes specific time frames within which FOIA requests and appeals must be acted upon. These include:

A. CMS must make an initial determination (a substantive response) regarding the disclosure of the requested records within 20 working days after receipt of the request by DFOI, or the appropriate office (if that office is authorized to respond directly).

B. CMS must make a determination on an appeal of a decision within 20 working days after receipt in DFOI. The CMS appeal official is the Principal Deputy Administrator, CMS, Room C5-16-03, 7500 Security Boulevard, Baltimore, Maryland 21244.

C. An extension of these time limits is authorized only in unusual circumstances, as specified in the Act. For example, should CMS need to do any of the following to process a FOIA request, processing time may be extended an additional ten working days:

(1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) search for, collect, and review a voluminous amount of records which are responsive to a single request; or

(3) consult with another agency which has a substantial interest in the disclosure determination of the request, or among two or more components of the agency having a substantial subject matter interest in the request.

In such cases, processing times may be extended by written notice to the person making such request setting forth the unusual circumstances for the extension, and by providing a date on which a determination is expected to be dispatched.

The requester may take action in Federal District Court if the specific time limits are not met. Furthermore, Federal District Courts can be asked to order disciplinary action against Federal employees responsible for arbitrary and capricious withholding of records.

30.6 - Authority to Release/Deny

With the exception of the documents listed in Section 30.7, which may be released directly at the appropriate designated level of authority, all requests for records which are received anywhere in CMS will be forwarded immediately to DFOI, by the FOIA Coordinator, in the manner described in Sections 40 and 50, Processing Guidance to CMS Components and CMS Regional Offices, and Processing Guidance to CMS Contractors.

As stated in the Department's FOIA regulation at 45 CFR §5.31, only the Freedom of Information Officers have the authority to release or deny records. Only the Director, DFOI, or his authorized designee, DFOI, can decide on the release of non-excepted CMS records, or the full or partial denial of any request. Therefore, all records provided by the CMS program areas and Medicare contractors to DFOI in response to a FOIA request must be unedited, original copies of agency records.

Requestors may appeal a CMS decision to withhold all or part of the records requested. Only the Administrator or Principal Deputy Administrator of CMS can rule on appeals of denials made under FOIA. Please see the Administrative Appeals Section at 30.11.

30.7 - Direct Release of Routine Records

CMS and Department policy permit certain categories of agency records to be directly released by CMS contractors and CMS components and Regional Offices, in accordance with three levels of designated authority (**Exhibit A**):

- (1) Releases which may be made by any CMS component, CMS Regional Office or Medicare contractor;
- (2) Releases which may be made by Medicare contractors upon the instructions of the responsible CMS Regional Office; and
- (3) Releases which may be made by the heads of CMS Centers and Offices and by Regional Administrators, or their designees.

30.8 – Non-CMS Records

Department Records

If records requested and/or located during a search are not exclusively records of CMS but, rather, include records of the Office of the Secretary (OS) or any OS Staff Division or any other organizational element of OS (such as the Office of the General Counsel or “OGC”), or records of the Office of Human Development Services and the Family Services Administration, or of any other Operational Divisions (OPDIVs) of DHHS, the FOIA Coordinator should provide all such records to DFOI, and label all such records. DFOI will be responsible for forwarding such records to the Department’s FOIA Officer for a disclosure determination, in accordance with the Department’s FOIA regulations at 45 CFR §5.31(b).

Other Non-CMS Records

State Medicaid Claim Records: CMS frequently receives requests for payment and other information relating to state Medicaid claims. Although the Medicaid program is jointly funded by the Federal government and the states, each individual state is responsible for administering the operations of their Medicaid program. A list of state Medicaid program web sites is available at <http://www.cms.gov/MedicaidEligibility/>. When DFOI or the Regional Offices receive a request for Medicaid-only records, in order to assist the requestor, our response should include contact information for the appropriate state Medicaid agency.

U.S. Railroad Retirement Board: The U.S. Railroad Retirement Board is an independent agency in the executive branch of the Federal Government. The Board's primary function is to administer comprehensive retirement-survivor and unemployment-sickness benefit programs for the nation's railroad workers and their families, under the Railroad Retirement and Railroad Unemployment Insurance Acts. In connection with the retirement program, the Board has administrative responsibilities for railroad workers' Medicare coverage. The Board's Bureau of Retirement Claims maintains the authority to provide or deny release of information in its files under FOIA. Requests for information received by CMS or any of its Regional Offices or contractors concerning Board Medicare program responsibilities or railroad retirement beneficiaries should be forwarded to:

Director of Retirement Claims
Railroad Retirement Board
844 N. Rush Street
Chicago, Illinois 60611

30.9 – Disclosure Policy and FOIA Exemptions to Disclosure

It is CMS' policy to adhere to the provisions of Open Government and Transparency, and to make the fullest possible disclosure of agency records. CMS, in accordance with the U. S. Department of Justice Attorney General's March 19, 2009 memorandum, operates under a presumption in favor of disclosure when processing FOIA requests. Please see the Attorney General's memo at <http://www.justice.gov/ag/foia-memo-march2009.pdf>

However, records may be withheld or redacted, if they fall within one of nine FOIA exemptions. The FOIA requires that a record must be released only to the extent that none of the FOIA exemptions, as interpreted by HHS's implementing regulations, apply. Historically, CMS has used only six of the nine FOIA exemptions, which are described below:

Exemption 2 - Internal Personnel Rules and Practices

Prior to a March 7, 2011 Supreme Court decision, the scope of this Exemption had been interpreted by the courts to allow the withholding of a variety of internal rules, procedures and guidelines. Previously, the courts had held that two different categories of information fell under the protection of this Exemption ("low two" and "high two" categories of information). Specifically, the "low two" category applied to relatively low level internal agency information, that which might be characterized as being of a relatively trivial nature. The "high two" category of information encompassed internal information on a far more substantial level, the disclosure of which "significantly risks circumvention of agency regulations or statutes."

The Supreme Court opined in the March 7, 2011 decision referenced above that Exemption 2, and the language contained with the Exemption, specifically the term "personnel rules and practices," is substantially narrowed to only encompass records relating to issues of employee relations and human resources. This decision requires a significant departure from our previous application of this Exemption.

Exemption 3 - Records Exempted by Other Federal Laws

This Exemption allows an agency to withhold records which may be specifically withheld under another statute, or withheld under criteria provided in another statute, which sufficiently describes the information or records at issue.

Exemption 4: Trade Secrets and Confidential Commercial or Financial Information

This Exemption allows an agency to withhold information such as trade secrets, and proprietary and confidential business financial information. Trade secrets are found in records containing secret, commercially valuable plans, formulas, processes, or devices used for making, preparing, compounding or processing trade commodities that are the end product of either innovation or substantial effort. Confidential commercial or financial information is found in records containing valuable, non-public data or information relating to businesses, commerce, trade, employment, profits, or finances.

Exemption 5 – Inter-agency and Intra-agency Internal Memoranda

This Exemption allows an agency to withhold certain inter-agency or intra-agency communications that fall within a generally recognized evidentiary privilege (e.g., deliberative process memoranda and other pre-decisional information; attorney work product documents prepared in anticipation of litigation or for trial; and attorney-client communications). In accordance with the emphasis on disclosure within the Open Government Act, when invoking the deliberative process privilege, an agency should only invoke this privilege when the release of the information would cause a foreseeable harm to the agency.

Exemption 6 - Clearly Unwarranted Invasion of Personal Privacy

This Exemption allows an agency to withhold information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy (e.g., names and other identifying information about individuals), which are contained in “personnel and medical files and similar files”. The definition of “similar files” has historically been broadly interpreted to include a wide variety of files. The United States Supreme Court has held that Congress intended the term "similar files" to be interpreted broadly, rather than narrowly. United States Department of State v. Washington Post Co, 456 U.S. 595 (1982). The Court stated that the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information" and opined that information that "applies to a particular individual" meets the threshold requirement for Exemption (b)(6) protection.

Exemption 7 - Law Enforcement

This Exemption allows an agency to withhold records or information compiled for law enforcement purposes (for both civil and criminal matters), when disclosure of that information:

- (a) Could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings; or
- (b) Would deprive any person of the right to a fair trial or an impartial adjudication, such as because of prejudicial publicity; or
- (c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; or
- (d) Could reasonably be expected to disclose the identity of a confidential source (including an individual, a State, local, or foreign government agency, or any private organization) which furnished information on either an expressed or reasonably inferred confidential basis, or disclose information furnished by a confidential source where a record or information in it has been compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation; or
- (e) Would disclose special techniques, guidelines, and procedures for investigations or prosecutions, not otherwise generally known to the public, if such disclosure could reasonably be expected to risk circumvention of the law; or
- (f) Could reasonably be expected to endanger the life or physical safety of any individual.

For a description of all the nine FOIA Exemptions, please see HHS FOIA regulations at <http://www.hhs.gov/foia/45cfr5.html>, Subpart F. As previously mentioned on page 9, CMS does not routinely invoke Exemptions 1, 8, and 9 in the agency's FOIA decisions. The reason for this is that CMS does not customarily maintain records relating to the subject matter of these Exemptions, which are, respectively, classified records involving national security, bank examination reports, and "geological and geophysical information and data, including maps, concerning wells".

30.10 – Fee Related Issues

User/Requestor Categories and Applicable Fees

Commercial Users: Fees should be assessed for search, duplication, and review of records.

News Media, including the Trade Press, and Educational and non-commercial Scientific Institutions:

Fees may be charged only for duplication. The first 100 pages of records are free.

All Others, including Public Interest Groups, Nonprofit Organizations, and Consumers:

Fees are limited to duplication and search costs only. There is no charge for the first 2 hours of search time and the first 100 pages of duplication.

Fee Schedule

Fees are set by the Department. Fees are rounded up to the nearest 15-minute increment. When employees are involved at more than one level, the appropriate rate for each is charged.

Fees are charged on a three-tiered scale, based on the grade levels of the employees processing the request, as follows (these fees represent the FOIA fee schedule as of 2011), and should be utilized on the fee invoice (Form CMS-633):

GS-1 through GS-8:	\$23
GS-9 through 14:	\$46
GS-15 or above:	\$83

Any increase in the fee schedule must first be authorized by the Department. This fee schedule may be subject to annual increases at the beginning of each January – please check the Department’s FOIA site for the current schedule, which is currently available at <http://www.hhs.gov/foia/fees/index.html>

Chargeable Services

CMS charges fees for a number of activities: searching for records, and reviewing the records located; certifying records; and sending records by special methods when responding to a FOIA request. Search fees may be charged, even if the responsive records are exempt from disclosure, or if no records are found. Although CMS does not charge for photocopying time, the agency does currently charge \$.10 per page for records released.

Computer Searching and Printing

Charges are for actual costs of operating the computer to obtain records, plus charges for the time of computer programmers, operators, or other employees at the rates in the Fee Schedule.

Certifying Records

CMS currently charges \$10.00, as of September 2011, to certify that records are "true copies". CMS will only certify records as true copies that have not left the agency's chain of custody. To further explain the definition of chain of custody as pertaining to CMS, CMS' Medicare contractors and state survey agencies are considered to be an extension of the agency while performing activities in support of the Federal Medicare program and under Section 1864 of the Social Security Act. Therefore, this allows CMS to certify records held or generated by these entities which relate to these specific federally mandated agency responsibilities, and are provided directly by those contractors and authorized agents to CMS within this chain.

Only CMS may certify agency records with the Department seal. If CMS contractors receive requests for certified records, they are to forward the records to the CMS Regional Office FOIA Coordinator, who will provide the records to the CMS Regional Office official authorized to certify records.

Examples of CMS certification verbiage to be utilized are at the CMS intranet web site at http://cmsnet.cms.hhs.gov/hpages/osora/records/INSTRUCTIONS_Seal.pdf .

Mailing

Charges are not assessed for regular mail. The Agency may use special carriers (e.g., Fed Ex, DHL, and UPS), express mail, or other special methods, if charges are billed directly to the FOIA requester (using the requester's account number). Under certain circumstances, in which it is to the benefit of the agency to utilize special mailing services (either to expedite delivery and/or track receipt of delivery), special mailing services such as overnight mail may be utilized, in accordance with CMS' established policies regarding use of overnight mail at <http://cmsnet.cms.hhs.gov/hpages/oics/overmail/overnightmailprocedures.pdf> .

Fee Waivers: In certain cases, requestors may ask for a full or partial waiver of the processing fees for their FOIA request. It is the responsibility of the requestor to provide a written substantiation for a fee waiver to the CMS FOIA Director. Requests for fee waivers are reviewed in accordance with Department's FOIA regulation at 45 CFR, § 5.45, which may be accessed online at http://edocket.access.gpo.gov/cfr_2010/octqtr/pdf/45cfr5.45.pdf or at the Department FOIA regulations at <http://www.hhs.gov/foia/45cfr5.html>, Subpart D. Should a Regional Office or a Medicare contractor FOIA Coordinator receive a request for a fee waiver, that fee waiver request should be forwarded to the CMS FOIA Director, preferably via electronic mail, with the requestor's written substantiation in support of the fee waiver request attached.

Delinquent Fee Invoices: The CMS Office of Financial Management (OFM) provides DFOI and the FOIA Coordinators with a monthly delinquency list of FOIA requestors who are currently overdue and owe the agency money for FOIA processing fees. All FOIA Coordinators and DFOI staff should check this delinquency list upon receipt of a new FOIA request. CMS will not process any new FOIA requests received from an individual or entity with an overdue fee invoice. Upon receiving a FOIA request from a delinquent requestor, a denial letter should be sent to the requestor, advising that the request is being closed and will not be processed (please see **Exhibit B**). The denial letter also advises the requestor that they may submit a new request to the agency after they have paid their overdue invoice(s).

However, should a FOIA coordinator receive notification that a requestor has become delinquent after a FOIA request is already being processed, CMS may complete processing that specific FOIA request. Please see the guidance in the memorandum dated August 3, 2011 from CMS FOIA Director Michael Marquis, which addresses this issue (**Exhibit C**).

30.11 – Administrative Appeals

Requestors may administratively appeal CMS' decision to withhold all or part of the records requested, or may appeal on other bases. All administrative appeals of FOIA requests must be submitted to the CMS Principal Deputy Administrator, at the following address: Principal Deputy Administrator, Centers for Medicare & Medicaid Services, C5-16-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Requestors must mail their appeal of CMS' decision to the above address within 30 (calendar) days of the date of the agency's decision letter. Appeals are submitted to the agency on the following bases:

- Constructive denial, when the agency has not responded to a FOIA request within statutory timelines;
- Denial of a request for a full or partial waiver of fees;
- Full or partial withholding of agency records under any of the FOIA Exemptions, and;
- Adequacy of search, and "No Records" responses.

30.12 – Electronic Workfolder Management

Since 2009, the Strategic Work Information Folder Transfer (SWIFT) system has been the official system of record for processing FOIA requests for all CMS offices, and must be used to process and track all FOIA requests handled by CMS and its Regional Offices. The CMS Central Office and the CMS Regional Offices all utilize the SWIFT system to input relevant data and track FOIA requests. The function of SWIFT is to create an electronic administrative file for each request, which documents actions performed by the agency in processing requests, including search activities, background information and notes, and responses to requestors. Currently, the CMS contractors do not have access to the SWIFT system and use their own tracking system(s), with the exception of one Medicare Administrative Contractor (MAC), which is currently involved in a test rollout of the SWIFT system. (An additional two MAC's are expected to participate in this test rollout in the future).

It is expected and required that all incoming FOIA requests received by CMS and our contractors will be logged into the appropriate tracking system within 24 hours of receipt.

Each significant action taken anywhere in CMS relative to a FOIA request, e.g., calls from component coordinators, reports of contact with the requester, notification of problems in conducting or completing the search, etc., must be noted on the SWIFT tracking system by date, to provide a total record of activity relative to that request. The "Notes" section of the SWIFT workfolder is customarily utilized to track relevant processing actions and issues with a FOIA request.

The SWIFT FOIA Users Guide is currently available on the CMS intranet at <http://cmsnet.cms.hhs.gov/hpages/osora/projects/FOIAUserGuide.pdf>

30.13 – Responsibilities of All Agency Staff and Contractors

CMS receives the highest number of FOIA requests of any agency within the Department. During fiscal year 2011, CMS received over 52,116 FOIA requests. For reference to CMS' annual FOIA statistics, please see the Department's annual FOIA reports at http://www.hhs.gov/foia/reports/10anlrpt.html#v_foia_requests .

With such a high volume of FOIA requests, it is likely that almost all CMS employees and contractors will be involved in processing a FOIA request at some time, and will need to search for agency records.

The FOIA requires the following: CMS must make a reasonable search for any requested records, in that the agency properly determines where responsive records are likely to be found, and agency employees and/or agency Medicare contractors search those locations for responsive records. A reasonable search requires that locations be searched where responsive hardcopy records and/or electronic records are believed to be maintained.

When requests are sent from DFOI to CMS components and CMS Regional Offices for records search via the SWIFT system, the searching component(s) or offices(s) are given 10 working days to conduct and complete their search, and reply to DFOI. When a FOIA request is transferred from CMS to a contractor for a directly reply (which should be done within 10 days), the contractor has 20 working days to complete and respond to the request, after receipt of the request.

30.14 – Processing Requirements for All Agency Staff and Contractors – High Priority Issues

A. Organizing Responsive Records by Item (labeling and bundling): FOIA requests frequently contain lists of multiple categories of records being requested. When providing responsive records to multi-item FOIA requests, the providing office/s must organize the records in relation to each separate item of the request and label them accordingly, for ease of reference and analysis. Responsive records up to 1,000 pages should be uploaded to the SWIFT system FOIA workfolder.

B. Document Search Activities: The office providing the responsive records must document their search activities and be able to describe the locations where they searched for records, and the names and locations of any electronic files and/or databases. This information should be added to the notes section in SWIFT, or added to the workfolder by a memo or e-mail maintained in the “Supporting Documents” section of the workfolder. To meet the requirements of performing a reasonable search required under the FOIA, a comprehensive search is necessary, in that Regional Offices and CMS program areas must make the effort to search in all areas where responsive documents would be likely to be maintained. Please refer to Section 30.5 (Time Frames for FOIA Processing) and Section 30.13 (Responsibilities of All Agency Staff and Contractors) for the timelines established to complete searches for records.

C. Document Search Time: Each staff member conducting a search for responsive records to a FOIA request must document their search time, and advise their office FOIA Coordinator of that information. The FOIA Coordinator will compile that information on a Form CMS-632, which is used to compile the costs for responding to FOIA requests (**Exhibit D**). SWIFT users may do this electronically within the system.

When it is necessary for state survey agency employees to search for Federal records in response to a FOIA request, that search time should also be reflected in the cost/fee compilation. This could be listed on the Form CMS-632 either under search time, or under the “Other” category, with a brief accompanying explanation and/or annotation.

D. “No Records” Responses: If the component or office searching was unable to locate responsive records, the searching entity should provide the reason for the “No Records” response: e.g., records believed to be maintained by another agency component (please identify the specific component where records are believed to be maintained); records sought not customarily maintained by the agency; records destroyed or transferred to the National Archives and Records Administration in accordance with agency’s records retention schedule; or other reason(s) the requested records could not be located.

CMS’ records retention guidelines are available at <http://cmsnet.cms.hhs.gov/hpages/osora/records/default.asp> , under the CMS Records Schedule and the CMS Master File Plan.

30.15 – Subpoenas

In accordance with HHS regulations, subpoenas which are deemed to be legally insufficient and not from a court of competent jurisdiction will be treated as FOIA requests. Please see the relevant HHS regulation at:

http://edocket.access.gpo.gov/cfr_2009/octqtr/pdf/45cfr2.5.pdf (**Exhibit E**)

For state survey related records, please refer to the October 2, 2009 memorandum from the Center for Medicaid and State Operations/Survey & Certification Group at http://www.cms.gov/SurveyCertificationGenInfo/downloads/SCLetter10_01.pdf, which provides guidance to staff regarding how to respond to subpoenas for survey related records.

For purposes of the Privacy Act, this agency considers a court of competent jurisdiction to be a Federal court, only. When a non-Federal court subpoena is for personal records contained in a Privacy Act System, unless accompanied by a signed release authorization which is compliant with the requirements of the Health Insurance Portability and Accountability Act (HIPAA), as described in **Exhibit G** on the following page, CMS FOIA analysts, regional office FOIA coordinators and Medicare contractors are to decline to produce the records based upon standing DFOI instructions, and use the standard subpoena denial response letter (**Exhibit F**).

Subpoenas from a Federal Court should be forwarded to the Office of General Counsel (OGC) for review. Additionally, any Federal subpoena asking for the appearance and testimony of agency employees should be sent to OGC for review and response.

30.16 – Frequently Requested Beneficiary Records

This instruction provides guidance concerning how CMS Central Office and CMS Regional Office components, Medicare Administrative Contractors (MACs) and other CMS contractors are to process FOIA requests for records on Medicare beneficiaries, as retrieved from Privacy Act Systems of Records. The instruction complies with both FOIA and the HIPAA Privacy rules.

Document(s) responsive to FOIA requests for claims/medical records of beneficiaries can be released directly from CMS Central Office and CMS Regional Offices, the MAC's, and other CMS contractors, by their respective FOIA Coordinators, if a signed HIPAA compliant release authorization is provided.

A. Requirements for a HIPAA Compliant Authorization (Exhibit G). The document in this Exhibit lists all the required elements and statements which must be included within a HIPAA compliant authorization, and may also be found online at <http://www.medicare.gov/MedicareOnlineForms> .

B. First Party Requests for Beneficiary Records: Medicare claims records are maintained within systems of records covered by the Privacy Act. An individual may request his/her own Medicare records by submitting a signed, written request containing sufficient information (name, address, social security number, and the time frame of the records being requested) to identify the Medicare records being requested. A Medicare beneficiary may also choose to submit a request for his/her own records by submitting a HIPAA compliant release authorization.

C. Third Party Requests for Beneficiary Records: The request must be made in writing, and must be accompanied by a valid authorization signed by the Medicare beneficiary. The authorization must include all the core elements and required statements of a valid privacy authorization as referenced in Exhibit G. If the third party is acting in a representative capacity such as a Power of Attorney, a copy of the Power of Attorney documents should be included.

D. Requests for Deceased Beneficiary Records: Document(s) responsive to FOIA requests for claims/medical records of deceased beneficiaries can be released directly from CMS Central Office and CMS Regional Offices, MAC's, and other CMS contractors, by their respective FOIA Coordinators, **if** the following conditions are met:

1. The FOIA request is made in writing by an authorized personal representative of the deceased, such as an executor, administrator, or other person who under applicable law has authority to act on behalf of a deceased individual or of the individual's estate, and the representative of the estate has provided written documentation authenticating his authority to represent the estate, or

2. The request is made in writing by a third party (such as an attorney) and is accompanied by a valid authorization signed by an authorized representative of the deceased, and includes documentation authenticating the authority of the signatory on the release authorization to represent the decedent's estate.

40 – Processing Guidance to Central Office Components and Regional Offices

General Information

A. The DFOI is responsible for administering, implementing, and monitoring CMS FOIA requirements. As previously referenced in Section 30.6, the Department's FOIA regulations at 45 CFR §5.31 state that only the Freedom of Information Officers within the Department have the authority to release or deny records for their respective agencies.

B. Each CMS Regional Office and Central Office Center and Office shall designate a FOIA Coordinator who shall be the contact point for that component. When an office or center appoints a new FOIA Coordinator or establishes a back up to their FOIA Coordinator, DFOI must be notified immediately. All FOIA requests received by the CMS Central Office and the Regional Offices must be entered into the SWIFT FOIA tracking system, within 24 hours of receipt. All FOIA requests received anywhere in the CMS Baltimore Central Office must be forwarded immediately to DFOI, within 24 hours of receipt, to be entered into the SWIFT system.

C. When a Central Office component receives a FOIA request for records which are not releasable except by DFOI, either directly from a requester or referred by a subcomponent, a copy of the request shall be made and a search for the requested documents begun, within 24 hours of receipt. The original copy of the request must be forwarded immediately to the DFOI.

REGIONAL OFFICES

When a FOIA request is received directly by a CMS Regional Office, the Regional Office FOIA Coordinator shall log the request into the SWIFT system, within 24 hours of receipt. The Regional Office must determine whether the requested records may be directly released, in accordance with their designated authority, or if the records must be forwarded to DFOI. If the request may be responded to directly, it shall be forwarded to the appropriate contractor for response, or the response prepared for the Regional Administrator. If a portion of the responsive records may be released directly, a partial reply to the requester may be made, and the requestor must be notified that the remaining records have been sent to the FOIA Officer for a disclosure determination. A copy of the partial reply, and/or an explanation of what documentation was released directly should be transferred to DFOI, and the SWIFT workfolder must be annotated, and the documents uploaded to the system accordingly.

A. If the request cannot be responded to directly, a copy of the request shall be made and forwarded to DFOI within 24 hours of receipt, and a search for the documents initiated.

B. In those instances when the material requested is available for forwarding to DFOI on the same or the next day, please include a copy of the incoming request with the records being forwarded to DFOI.

C. When a CMS Regional Office is aware that the documents requested are held in Central Office, and it would be more expedient for a Central Office component to respond (more timely, less costly, etc.), a note to that effect must be placed in the SWIFT workfolder, and the Regional Office should transfer the request in SWIFT to DFOI.

D. When a request is received, either by DFOI or the Regional Offices, which appears to require a multiple-region search, that request should be coordinated to minimize duplication of efforts. Should a Regional Office receive such a request, the FOIA Coordinator should notify DFOI immediately. DFOI will then consult with Regional Office contacts to determine which CMS business line and consortium would have control over the subject matter and related responsive records, and establish a central contact to oversee and coordinate the search process.

Please refer to the Standard Operating Procedures (SOP), as defined within the 2010 SOP for CMS Regional Offices, which in conjunction with this chapter, provide additional operational guidance on FOIA processing policies and procedures for CMS Regional Offices: <http://cmsnet.cms.hhs.gov/hpages/osora/projects/FOIASOP.docx>
Additionally, the SWIFT Document Management System FOIA Module Regional Office How-To is available at <http://cmsnet.cms.hhs.gov/hpages/osora/projects/RegionsHowTo.pdf> .

DFOI ACTIONS

When DFOI receives a FOIA request directly from a requester for material not on the direct release list, DFOI will:

A. Within 24 hours of receipt, time/date stamp the request, and input the request data and copies of the related documents into the electronic SWIFT FOIA Tracking system, which will assign the FOIA request a unique case tracking number. When inputting a new FOIA request into the SWIFT system, always check to ensure that a request is not a duplicate of a FOIA request already in the system. DFOI staff will then immediately forward the request to the CMS component(s) most likely to hold the requested documents. (A request for directly releasable material will be forwarded to the appropriate office via SWIFT, with an annotation identifying it as a direct release.)

Revised 01/24/12. Note: This version supersedes the February 2005 base manual, the May 2010 revisions, and any other versions.

B. The SWIFT system will show all components to which the request has been referred, so that all FOIA Coordinators will be aware of which counterparts are also involved in each document search.

C. Components are encouraged to suggest to DFOI other CMS components which might appropriately be contacted as a source of responsive records for a FOIA request.

D. When DFOI receives a request which was originally received by any CMS component or FOIA Coordinator in the Baltimore Central Office, in most instances, the request will be referred back to the component originally receiving the request via the SWIFT system (as well as to others likely to hold responsive documents), unless it is obvious that the referring component does not maintain the requested records. The SWIFT system allows the responding component(s) 10 business days to complete their records search, and return the responsive records located to DFOI. Responsive records up to 1,000 pages should be uploaded to the SWIFT system FOIA workfolder.

E. When the FOIA request requiring DFOI review of the responsive records is finalized, and a response issued, DFOI will upload a copy of the response letter into the SWIFT system.

40.1 – Organization and Provision of Responsive Records

DFOI utilizes electronic redaction technology to process agency records requested under the FOIA. Therefore, it is incumbent upon all program offices to provide responsive records in an electronic form or format. Responsive records up to 1,000 pages should be uploaded to the SWIFT system FOIA workfolder, and labeled accordingly to reflect each item of the request if the request contains multiple items.

A. When a request is for more than one item or subject, include a cover sheet listing those items for which responsive agency records have been located, and also list those items for which no records have been located. Please provide this listing in the order of the requested records as stated in the incoming FOIA request.

B. Important - Please organize the responsive records in accordance with the item number of the request to which the records correspond. If the request seeks documents for more than one item of information, organize the documents according to the specific item to which they respond **and** clearly identify the item associated with each group of records.

C. If the responsive records being provided for a request are of poor quality, but are the best available records in possession of the agency, please note that for the records.

D. When DFOI receives mail delivery of responsive records from the Regional Offices, DFOI staff will annotate the SWIFT workfolder with the receipt date of the records, and a brief description of the records (e.g. the approximate volume of the records, and the format of the records, such as disk or hardcopy).

40.2 – Disclosure Concerns

A. CMS program areas and Regional Offices should send one complete set of all responsive records to DFOI in response to the search referral, along with a completed Form CMS-632. Medicare contractors should send one complete set of responsive records to the FOIA Coordinator in the appropriate Regional Office, accompanied by a completed Form CMS-632. If you recommend that the records or a portion thereof should be withheld, indicate your reason(s) on the Form CMS- 632, or in a separate note or memorandum. Be certain to explain the specific harm that would likely ensue from disclosure. A formal memorandum is not necessarily required, but the component or contractor must inform DFOI in writing of its reason for recommending denial. A summary of the six FOIA Exemptions applying to CMS is listed in Section 30.9 of this chapter (Disclosure Policy and Exemptions).

B. Please annotate the records with any disclosure recommendations, or provide a list and description of the records for which either full or partial denial is recommended. If certain portions of a document are recommended for withholding, you may highlight those areas.

C. If any non-CMS records are included in the responsive records (OS, DHHS, other agencies), those records should be separated and clearly marked.

40.3 – General Fee Processing Information

The Department’s fee schedule allows processing a request without charge when the cost of collecting a fee would exceed the amount of the fee. CMS has established that charges of less than \$25.00 should not be billed. Exception: when an individual or organization submits multiple FOIA requests within 90 calendar days which individually do not meet the minimum charge level, the charges for those requests may be aggregated and invoiced. Please see Section 5.42 of the DHHS FOIA Regulations, available online at <http://www.hhs.gov/foia/45cfr5.html>, Subpart D. When invoicing aggregate charges for two or more requests, please be sure to advise the requester that the invoice is for aggregate charges.

A. All checks or money orders for the payment of FOIA services are to be made payable to the “Centers for Medicare & Medicaid Services.”

B. Waivers or reduction of fees in the public interest will be made only by the Director, DFOI, based on justification submitted by the requester. As previously referenced above, the Department's FOIA fee regulations, including the criteria for fee waivers, are available online at <http://www.hhs.gov/foia/45cfr5.html>, Subpart D.

If the material for which the fee waiver is requested is directly releasable, DFOI will inform the releasing component of the waiver decision. In such cases the materials involved are not to be forwarded to DFOI for release, but the releasing component will be asked to verify the costs which are involved in the waiver and for its recommendation regarding the waiver request.

C. When a requester asks to be advised of the cost of processing a request, or places a limit on the charges he is willing to accept, a good-faith estimate should be made prior to full processing of the request.

D. Advance payment may be requested in two instances:

1. When costs of \$250 or more are involved, or
2. Where the requester has been delinquent in paying FOIA fees in the past.

Please refer to **Exhibit H**, Fee Invoicing Guidance and Instructions, for information regarding the compilation of the fee invoice (CMS-633 form).

50 - Guidance and Instructions to CMS Contractors

The DFOI is responsible for administering, implementing, and monitoring CMS FOIA requirements. The instructions and guidance in this chapter are intended to assist CMS contractors in the performance of their FOIA responsibilities.

Each CMS contractor shall designate a FOIA Coordinator who shall be the contact point for that contractor. When a contractor appoints a new FOIA Coordinator or establishes a back up to their FOIA Coordinator, CMS DFOI must be notified immediately

CMS contractors may directly release the records described in Exhibit A (CMS List of Authorized Direct Release Categories of Records), as specified as being within their "direct release" authority.

50.1 – Reporting Requirements for CMS Contractors

Contractors are responsible for accurately reporting their FOIA processing activity to CMS. CMS has outlined its monthly contractor reporting requirements for FOIA activities in the Joint Signature Memorandums (JSM's) issued May 19, 2010, and March 23, 2011. Additionally, CMS has provided further guidance and instructions to its contractors regarding annual FOIA report data in the Joint Signature Memorandum / Technical Direction Letter 11486, dated September 27, 2011. These three JSM's are included as **Exhibit I**.

Contractor Accounting for Processing Costs

A. Fill out, completely and accurately, a Form CMS-632 for each direct release. Form CMS-632 for direct responses should be filled out by the individual(s) processing the request. This form must be prepared if measurable search time was expended, whether or not the responsive records were located, or if the requestor was charged.

B. Maintain a "Freedom of Information" log or spreadsheet on a daily basis.

C. Retain copies of all completed Form CMS-632s in your files until DFOI provides a written directive to you to destroy them. The 632s serve as documentation of resources expended for FOIA processing. Please do not submit copies of CMS-632 forms for direct responses (for those requests which are fully satisfied by the contractor's response) to the Regional Office or DFOI. However, if a portion of the requested records are not within the Medicare contractor's authority to directly release, please forward the records to the appropriate CMS Regional Office and enclose a copy of the 632 form detailing the hours expended by the contractor in responding to the FOIA request.

D. For requests which seek records which are outside the designated authority of the Medicare contractor, forward those records to the appropriate CMS Regional Office FOIA Coordinator. Enclose a Form CMS-632 with the records reflecting the search time expended, and the number of pages (or electronic files, or disks) being forwarded.

EXHIBIT A

Direct Release of Records (In Accordance with Three Levels of Release Authority)

Category 1	RECORDS WHICH CAN BE RELEASED BY ANY CMS COMPONENT OR ITS CONTRACTORS
1-1	<p>Provider Cost Reports and Backup Data (Should the physician compensation schedule be included within the cost report, do not release pages listing amounts paid to individual physicians or group practices).</p> <p>Form CMS-339, Cost Report Reimbursement Questionnaire, and working trial balances are not part of the cost report. Do not directly release these documents; send them to DFOI for disposition.</p>
1-2	Budget Methodology (from OBRA 87)
1-3	DME Reimbursement Calculations (as per OBRA 87)
1-4	All Policy Issuances, Provider Bulletins Prepared for Distribution to the Provider Community, "Numbered" Program Memorandums (Including Intermediary and Carrier Letters, CMS Transmittals, etc.)
1-5	<p>Provider Cost Data Tapes (from Cost Reports)</p> <p>Directly release data arrays used to formulate routine cost limits for providers (include provider name, number, address, bed size, HI days, etc., per diem and cost limit).</p>
1-6	<p>Profiles of Customary Charges, Compilations of Prevailing Charges, or Fee Schedules</p> <p>Remove the frequency field when releasing profiles of customary charges that identify individual practitioners. Remove personal identifiers from backup data for prevailing charges--unless the profiled practitioner is also the FOIA requester. Provide profiles of customary charges free of charge once per year to each practitioner who requests his or her own profile.</p>
1-7	Lists of Medicare Contractors, Providers and Suppliers, including Provider Numbers
1-8	<p>CMS Manuals (if not publicly available online)</p> <p>The receiving component or contractor will fulfill requests for portions of manuals. If the request is for a complete manual, refer the requester to the Superintendent of Documents, Government Printing Office, P.O. Box 37194, Pittsburgh, PA. 15250-7954. (Phone Number: (202) 512-1800; fax number: (202) 512-2250), or to the nearest Regional Depository</p>
1-9	Hospital Diagnostic Related Group (DRG) Reports

EXHIBIT A

Direct Release of Records (In Accordance with Three Levels of Release Authority)

	RECORDS WHICH CAN BE RELEASED BY ANY CMS COMPONENT OR ITS CONTRACTORS
1-10	Statistical Prospective Payment Data Release as provided in regional office guidance.
1-11	All Material Listed in the FOIA Index The Index is a listing required by the Act, of all final opinions, orders made in the adjudication of cases, and statements of policy and interpretations which have been adopted by the Agency but are not published in the Federal Register. The Index is published in the Federal Register and can be purchased from the Government Printing Office.
1-12	Documents Addressing Medicare Coverage Issues Release documents listing and/or describing acceptable diagnostic/procedure codes, rate schedules, covered services. Do not release documents that contain any internal claims processing guidelines, service frequency, and/or dollar limits
1-13	Summary Provider Statistical and Reimbursement (PS&R) Reports
1-14	FOIA Request(s) Made by Other Requesters Release the name of the FOIA requester. Do not release home addresses and phone numbers, or any other type of personal contact information, such as personal e-mail addresses.

EXHIBIT A

Direct Release of Records (In Accordance with Three Levels of Release Authority)

Category 2	RECORDS THAT CAN BE RELEASED BY MEDICARE CONTRACTORS, WHEN INSTRUCTED BY THEIR REGIONAL OFFICE
2-2	Total Person-Years (or quarters, etc.) Employed Per Report Period
2-2	Person-Hours Per Claim Processed
2-3	Number of Weeks Work on Hand, or Claims Processing Volume/Backlog
2-4	Payment Record Error Rates
2-5	Denial Rates
2-6	Percent of Claims or Total Payments Involving Reduction in Charges

EXHIBIT A

Direct Release of Records (In Accordance with Three Levels of Release Authority)

Category 3	RECORDS WHICH CAN BE RELEASED BY THE DIRECTORS OF CMS CENTERS AND OFFICES, AND BY REGIONAL ADMINISTRATORS (OR THEIR DESIGNEES)
3-1	Statements of Policy or Definitive Policy Interpretations Communicated via Program Memorandums That Are Not Numbered
3-2	All Correspondence Between the Agency (including the contractors) and Any Outside Entity However, investigatory files and documents with personal identifiers or proprietary financial or business information should be forwarded to DFOI for disposition. Should there be any question regarding the releasability of a record, please forward the record to DFOI.
3-3	All Final Evaluation Reports A. Quality Assurance Surveillance Plan (QASP) Guides and Final Reports B. Uniform Control Evaluation Program (UNICEP) C. State Medicaid Operations Report (SMOR) D. Final Target Area Review Report (TARR) E. System Performance Review (SPR) F. State Assessment Review Guides G. State Agency Evaluation Program Report H. State and CMS Survey Report
3-4	Final Medicare/Medicaid SNF and ICF Survey Report (Form HCFA-525), unless the report contains patient identifiers
3-5	Final ICT/MR Survey Report (Form CMS-3070B), unless the report contains patient identifiers.
3-6	Contractor Workload Report

EXHIBIT A

Direct Release of Records (In Accordance with Three Levels of Release Authority)

Category 3	RECORDS WHICH CAN BE RELEASED BY THE DIRECTORS OF CMS CENTERS AND OFFICES, AND BY REGIONAL ADMINISTRATORS (OR THEIR DESIGNEES)
3-7	Notices of Cost Report Re-Opening and Tentative Settlement Agreements
3-8	Quarterly Expenditure Report (Form CMS-64)
3-9	Medical Assistance Expenditure Report
3-10	Medicaid Program Budget Report (FORM HCFA-25), PHDDS Tapes
3-11	MACC Report
3-12	Statement of Deficiencies and Plans of Corrections (Form CMS-2567), unless they contain patient identifiers.
3-13	Results of Follow-Up Surveys (do not release survey worksheets).
3-14	ESRD Facility Survey Reports (FORM CMS-2744)
3-15	1861 (j) (1) letters
3-16	State Plans, Plan Amendments, and Related Correspondence Between CMS and Medicaid State Agencies and Advanced Planning Documents for MMIS Procurements If the Plan Amendment or APD contains a State's financial strategy, forward the document to DFOI for disposition. Also forward to DFOI any internal communications related to State Plans.
3-17	Documents Already Released By a Hearing Officer for a Hearing, with Beneficiary Identifiers Removed If removal of beneficiary identifiers is not sufficient to protect the beneficiary's identity, forward the documents to DFOI for disposition.

EXHIBIT A

**Direct Release of Records
(In Accordance with Three Levels of Release Authority)**

Category 3	RECORDS WHICH CAN BE RELEASED BY THE DIRECTORS OF CMS CENTERS AND OFFICES, AND BY REGIONAL ADMINISTRATORS (OR THEIR DESIGNEES)
3-18	<p>Lists of Sanctioned/Terminated Providers: please note that excluded provider information is now publicly available at the OIG Internet link at https://www.epls.gov/</p> <p>Release after OIG notifies the providers, and provides the applicable “Medicare/Medicaid Sanction-Reinstatement Report” to CMS. Only directly release lists of excluded persons after removing social security numbers.</p>
3-19	<p>Information Instruments</p> <ul style="list-style-type: none">A. MEQC Error Rate List, After PublicationB. Computer Listing of MEQC DataC. SPECTRUM ReportD. AAPCC and Other Aggregated Demographic DataE. Ownership and Control Forms (Form CMS-1513)F. ESRD Application for Certification (Form CMS-3402)G. ESRD Provider Statistical and Cost Questionnaires (Form CMS- 2552--Hospital-based and CMS-265--Independent Facilities)H. Certification and Transmittal Forms (Form CMS-1539)I. Other Routine Certification Applications and Documents (e.g., OSCAR listings of selected provider certification data).
3-20	PRO Generic Quarterly Screens

EXHIBIT A

**Direct Release of Records
(In Accordance with Three Levels of Release Authority)**

Category 3	RECORDS WHICH CAN BE RELEASED BY THE DIRECTORS OF CMS CENTERS AND OFFICES, AND BY REGIONAL ADMINISTRATORS (OR THEIR DESIGNEES)
3-21	<p>Amounts Paid to Medicare Institutional Providers</p> <p>Release amounts paid to: (1) organizations (such as hospices, home health agencies, and health maintenance organizations); (2) facilities (such as hospitals, skilled nursing facilities), and; (3) suppliers (such as durable medical equipment suppliers), for services and/or equipment and supplies provided to Medicare beneficiaries.</p> <p><u>Do not</u> disclose information identifying a particular beneficiary nor the amounts paid to a particular individual, such as a physician or practitioner. Forward requests for such information to DFOI for disposition.</p> <p>Do not directly disclose information pertaining to the Retiree Drug Subsidy. These requests should be forwarded to DFOI.</p>

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop N2-20-16
Baltimore, Maryland 21244-1850



Office of Strategic Operations and Regulatory Affairs/ Division of Freedom of Information

Refer to: Control Number _____ and PIN _____

Date:

FOIA Requestor
Address

EXHIBIT B

Dear :

Based on Department of Health and Human Services' Regulations at 45 C.F.R. Section 5.44(b), we cannot process your (date of letter), Freedom of Information Act (FOIA) request for *<Insert Request Information>* , until you have paid the following delinquent FOIA account:

<Insert Name/Company>

<Insert invoice Number>

<Insert Billing Date>

<Insert Case Number>

<Insert Prin.>

<Insert Int.>

<Insert Adm.>

<Insert Pen.>

<Insert Bal.>

To satisfy this account, submit payment to: The Centers for Medicare & Medicaid Services, Division of Accounting, P.O. Box 7520, Baltimore, Maryland 21207-0520. Do not submit your payment to this office.

After you pay this outstanding overdue balance, you may resubmit your FOIA request for processing to our office.

Questions regarding payment of your delinquent account should be directed to: Ms. Audra Glasgow, CMS, Division of Accounting, at (410) 786-2567. Notification of settlement should be directed to (Name of FOIA analyst or coordinator) of this office at (telephone number).

Sincerely yours,

Michael S. Marquis (or FOIA Coordinator)
Director
Division of Freedom of Information

Enclosure
45 C.F.R. Section 5.44

TOPIC: MANAGING FOIA REQUESTS FOR REQUESTER (INDIVIDUAL OR ORGANIZATION) ON THE OFM DELINQUENCY LIST

Exhibit C

DATE OF RELEASE: 08/03/2011

AUTHORITY: Michael Marquis, Director, Division of Freedom of Information

GUIDANCE:

The CMS Office of Financial Management (OFM) is responsible for the administration of accounts receivables for the Agency. As part of this responsibility, OFM distributes a monthly listing of all individuals or organizations on the accounts receivable delinquent FOIA aging report, by debtor, referred to as the “OFM FOIA delinquency list.” The list is distributed by the 5th of each month and is shared with regional FOIA coordinators. Within 48 hours of receipt, FOIA coordinators shall distribute the delinquency listing to their regional FOIA team members and Medicare contractors assigned to them (Attachment A).

NEW REQUEST – REQUESTER ON LIST

If a regional office receives a new FOIA request directly from an individual or organization that is currently on the OFM FOIA delinquency list, the CMS regional office shall create a folder in SWIFT for the new case, send the requesting party a delinquency denial letter advising the requester that his/her request will not be processed, scan the letter into the SWIFT folder, and close the case immediately.

Likewise, if a CMS Medicare contractor receives a FOIA request directly from an individual or organization on the delinquency list, the contractor shall send the requesting party a delinquency denial letter, advising that the request will not be processed, and immediately close the case.

EXISTING REQUEST – REQUESTER ON LIST

If a CMS regional office receives the OFM FOIA delinquency list and discovers that an individual or organization on the list has an existing FOIA request in process, the CMS regional office shall continue to process the request through completion, without delay.

Likewise, if a CMS Medicare contractor receives the OFM FOIA delinquency listing and discovers that an individual or organization on the list has an existing FOIA request in process, the CMS contractor shall continue to process the request through completion, without delay. This guidance supersedes the JSM/TDL-10279; 05-13-10 section entitled “Delinquent List/Fee-Related Closure.”

INFORMATION NOT RELEASABLE TO THE PUBLIC UNLESS AUTHORIZED BY LAW

This information has not been publicly disclosed and may be privileged and confidential. It is for internal government use only and must not be disseminated, distributed, or copied to persons not authorized to receive the information. Unauthorized disclosure may result in prosecution to the full extent of the law.

IF STARTED THEN FINISH

The “if started then finish” concept begins at the initial intake point for any request. Therefore, for example, if a request is logged by DFOI and transferred to a region, or logged by the region and transferred to a contractor *and*, in the intervening time, the requester goes on the delinquency list, the regional office or contractor shall continue to process the case through to completion, without delay.

Likewise, if a contractor receives and logs a request directly and transfers documents to a regional office, and in the intervening time, the requester goes on the delinquency list, the regional office shall continue to process the case through to completion, without delay.

CLEARING THE LISTING

When an individual or organization is cleared from the OFM delinquency list during the month, an e-mail will be sent from OFM to the requester or organization and to the regional office FOIA coordinators. The FOIA coordinators will share the e-mail with their regional FOIA teams and all Medicare contractors assigned to them (Attachment A). The cleared listing provides the ROs and contractors with approval to proceed with processing new FOIA requests.

INFORMATION NOT RELEASABLE TO THE PUBLIC UNLESS AUTHORIZED BY LAW

This information has not been publicly disclosed and may be privileged and confidential. It is for internal government use only and must not be disseminated, distributed, or copied to persons not authorized to receive the information. Unauthorized disclosure may result in prosecution to the full extent of the law.

Centers for Medicare & Medicaid Services / Freedom of Information Act Request

Case No. _____ Date Received: _____ Due Date to FOIA Office: _____ Response Date: _____

Requester: _____

Affiliation/Address : _____

Subject: _____

EXHIBIT D

<input type="checkbox"/> Commercial	Category II. Requester <input type="checkbox"/> Education/Scientific <input type="checkbox"/> NewsMedia	Category III. Requester Other: _____
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Actual Costs of Responding to Request

(This Section To Be Completed by Program Staff, Including Clericals)

Is There Program Concern About Disclosing These Records Yes No
 (Note: Make **NO** Deletions on Records)

<input type="checkbox"/> Ongoing Deliberations	<input type="checkbox"/> Invasion of Privacy	<input type="checkbox"/> No Records Found
<input type="checkbox"/> Decision-making Process	<input type="checkbox"/> Pending Litigation	
<input type="checkbox"/> Open Investigation	<input type="checkbox"/> Proprietary Information	
<input type="checkbox"/> Other (Specify)		

Name of Program Official Responsible for Records
 Location and Telephone Number:

ACTUAL PROCESSING COSTS:	Hours	Hourly Wage	Total	Invoiced Fees
Reading/Interpreting			
Clarifying/Negotiating			
Searching for Records				
Computer-based Data				
Other (Specify)				
Total				

Copying costs @ \$.10 per page
 No. of pages _____ x \$.10 = _____ x _____ Sets =

(This Section Below To Be Completed by FOIA Staff/Releasing Office, Including Clericals)

ACTUAL PROCESSING COSTS:	Hours	Hourly Wage	Total	
Logging/Tracking			
Consultation			
Clarifying/Negotiating			
Review/Edit/Delete				
Compose/Type Response (Memo, e-mails, etc.)			
Other (specify)				

Copying costs @ \$.10 per page
 No. of pages Located & Copied: _____ x \$.10 = _____ x _____ # of Sets =
 No. of pages released: _____
 Mailing Costs: Postage _____ Envelope _____ Fee Assessed: _____
 Special Handling _____ Other _____ Total _____
 Total Actual Costs: _____

Comments:

IF YOU HAVE QUESTIONS, PLEASE CALL YOUR FREEDOM OF INFORMATION OFFICE, and speak with _____, at 410-786-_____.

EXHIBIT E

[Code of Federal Regulations]
[Title 45, Volume 1]
[Revised as of October 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 45CFR2.5]

[Page 10]

TITLE 45--PUBLIC WELFARE

SUBTITLE A--DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 2_TESTIMONY BY EMPLOYEES AND PRODUCTION OF DOCUMENTS IN PROCEEDINGS
WHERE THE UNITED STATES IS NOT A PARTY--Table of Contents

Sec. 2.5 Subpoenas duces tecum.

(a) Whenever a subpoena duces tecum has been served upon a DHHS employee or former employee commanding the production of any record, such person shall refer the subpoena to the Office of the General Counsel (including regional chief counsels) for a determination of the legal sufficiency of the subpoena, whether the subpoena was properly served, and whether the issuing court or other tribunal has jurisdiction over the Department.) If the General Counsel or his designee determines that the subpoena is legally sufficient, the subpoena was properly served, and the tribunal has jurisdiction, the terms of the subpoena shall be complied with unless affirmative action is taken by the Department to modify or quash the subpoena in accordance with Fed. R. Civ. P. 45 (c).

(b) If a subpoena duces tecum served upon a DHHS employee or former employee commanding the production of any record is determined by the Office of the General Counsel to be legally insufficient, improperly served, or from a tribunal not having jurisdiction, such subpoena shall be deemed a request for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure established in 45 CFR part 5.

[68 FR 25840, May 14, 2003]

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop N2-20-16
Baltimore, Maryland 21244-1850



Office of Strategic Operations and Regulatory Affairs/ Division of Freedom of Information

Refer to: Control Number _____ and PIN: _____

3/4/2011

FOIA Requestor

EXHIBIT F

Address

Dear

This responds to the [Date of Subpoena], subpoena duces tecum, initiated by your firm, for certain Medicare records in our possession concerning _____.

The Department of Health and Human Services' regulation at 45 C.F.R. Part 2 states, among other things, that the Department will treat subpoenas duces tecum for records in its possession as requests under the Freedom of Information Act (FOIA) (5 U.S.C. § 552).

Because the records the subpoena seeks are in a Privacy Act system of records, the Privacy Act (5 U.S.C. 552a) precludes release of those records except pursuant to a written authorization to release signed by the subject(s) of the records or unless the FOIA requires release of the records or a court of competent jurisdiction orders release. Regarding the latter condition of disclosure, for purposes of the Privacy Act, a court of competent jurisdiction is a Federal court, only.

Review of this matter indicates that your firm has not presented a valid written authorization to release the records signed by the subject(s) of the records. (See the enclosure for a listing of the required elements and statements that an authorization must contain in order for the Centers for Medicare & Medicaid Services to honor it.)

Moreover, your firm's subpoena is not an order of a court of competent jurisdiction, and 45 C.F.R. Part 2 requires us to treat the subpoena duces tecum as a FOIA request. Further, I have determined that the requested records are exempt from mandatory disclosure under exemption (b)(6) of FOIA (5 U.S.C. 552(b)(6)). Exemption (b)(6) permits the withholding of information about individuals in "personnel and medical files and similar files," when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."

Based on the foregoing, I respectfully decline to produce the Medicare records requested by your firm's subpoena duces tecum.

If you would like to resubmit your request, and hasten the Agency's response, you may submit your request to the CMS Regional Office which has jurisdiction over the state where the services were provided. A list of Regional Offices and the states they have jurisdiction over is attached.

If you have reason to disagree with this decision, you may appeal. Your appeal should be mailed within 30 days of the date of this letter to: The Principal Deputy Administrator, Centers for Medicare & Medicaid Services, Room C5-16-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Please mark your envelope "Freedom of Information Act Appeal," and enclose a copy of this letter.

Sincerely yours,

Michael S. Marquis
Director
Division of Freedom of Information

Enclosure: Core Elements and Required Statements of a Valid Authorization
Model Authorization Form
Listing of Regional Offices

CORE ELEMENTS & REQUIRED STATEMENTS OF A VALID AUTHORIZATION

A VALID AUTHORIZATION MUST CONTAIN THE FOLLOWING ELEMENTS:

1. The signature of the individual and date. If the authorization is signed by a personal representative of the individual, proof of his/her authority to represent must be attached to the authorization.
2. The name and other specific identification of the person(s) or class of persons authorized to make the requested disclosure.
3. A description of the information to be disclosed that identifies the information in a specific and meaningful fashion.
4. The name or other specific identification of the person(s) or class of persons to whom the requested disclosure is to be made.
5. An expiration date or an expiration event that relates to the individual or the purpose of the disclosure. (If no time frame is given, we must assume that the consent is for a one-time-only disclosure);
6. A description of the purpose of the requested disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when the beneficiary initiates the authorization and does not, or elects not to, provide a statement of the purpose); and

A VALID AUTHORIZATION MUST CONTAIN THE FOLLOWING STATEMENTS:

(or similar statements that reflect the beneficiary’s understanding of the articulated principles)

1. I understand that I have the right to revoke this authorization at any time. I must do so by writing to the same person(s) or class of persons that I directed this authorization to. The revocation will not apply to information that has already been released in response to this authorization.
2. I understand that my refusal to authorize disclosure of my personal medical information will have no effect on my enrollment, eligibility for benefits, or the amount Medicare pays for the health services I receive.
3. I understand that information disclosed pursuant to this authorization may be re-disclosed by the recipient and may no longer be protected by law.

Source: Transmittal AB-03-147 dated September 26, 2003, and 45 C.F.R. § 5b.9

Prepared By: Freedom of Information Group, CMS (July 12, 2004)

**CENTERS FOR MEDICARE & MEDICAID SERVICES
REGIONAL OFFICE FREEDOM OF INFORMATION ACT
MAILING AND FACSIMILE INFORMATION**

CMS, Boston Regional Office
JFK Federal Building, Rm. 2375
Boston, MA 02203
(617) 565-1339 (Fax)
(CT, ME, MA, NH, RI, VT)

CMS, Dallas Regional Office
1301 Young Street, Rm. 714
Dallas, TX 75202
(214) 767-6400 (Fax)
(AR, LA, NM, OK, TX)

CMS, New York Regional Office
26 Federal Plaza, Room 38-130
New York, NY 10278
(212) 264-2790 (Fax)
(NJ, NY, PR, VI)

CMS, Kansas City Regional Office
601 East 12th Street
Kansas City, MO 64106
(816) 426-3548 (Fax)
(IA, KS, MO, NE)

CMS, Philadelphia Regional Office
150 South Independence Mall West
Philadelphia, PA 19106
(215) 861-4240 (Fax)
(DE, DC, MD, PA, VA, WV)

CMS, Denver Regional Office
1600 Broadway, Suite 700
Denver, Colorado 80202
(303) 844-3753 (Fax)
(CO, MT, ND, SD, UT, WY)

CMS, Chicago Regional Office
233 N. Michigan Avenue, Suite 600
Chicago, IL 60601
(312) 353-0252 (Fax)
(IL, IN, MI, MN, OH, WI)

CMS, Seattle Regional Office
2201 6th Avenue, RX 41
Seattle, WA 98121
(206) 615-2325 (Fax)
(AK, ID, OR, WA)

CMS, Atlanta Regional Office
Atlanta Federal Center, 4th Floor
61 Forsyth Street, SW Suite 4T20
Atlanta, GA 30303-8909
(404) 562-7186 (Fax)
(AL, NC, SC, FL, GA, KY, MS, TN)

CMS, San Francisco Regional Office
90 7th Street, Suite 5-300
San Francisco, CA 94103
(415) 744-3517 (Fax)
(AM, Samoa, AZ, CA, GU, HI, NV)

Attachment B

CORE ELEMENTS & REQUIRED STATEMENTS OF A VALID AUTHORIZATION

A VALID AUTHORIZATION MUST CONTAIN THE FOLLOWING ELEMENTS:

1. The signature of the individual and date. **If the authorization is signed by a personal representative of the individual, proof of his/her authority to represent must be attached to the authorization.**
2. The name and other specific identification of the person(s) or class of persons authorized to make the requested disclosure.
3. A description of the information to be disclosed that identifies the information in a specific and meaningful fashion.
4. The name or other specific identification of the person(s) or class of persons to whom the requested disclosure is to be made.
5. An expiration date or an expiration event that relates to the individual or the purpose of the disclosure. (If no time frame is given, we must assume that the consent is for a one-time-only disclosure);
6. A description of the purpose of the requested disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when the beneficiary initiates the authorization and does not, or elects not to, provide a statement of the purpose); and

A VALID AUTHORIZATION MUST CONTAIN THE FOLLOWING STATEMENTS:

(or similar statements that reflect the beneficiary’s understanding of the articulated principles)

1. I understand that I have the right to revoke this authorization at any time. I must do so by writing to the same person(s) or class of persons that I directed this authorization to. The revocation will not apply to information that has already been released in response to this authorization.
2. I understand that my refusal to authorize disclosure of my personal medical information will have no effect on my enrollment, eligibility for benefits, or the amount Medicare pays for the health services I receive.
3. I understand that information disclosed pursuant to this authorization may be re-disclosed by the recipient and may no longer be protected by law.

Source: Transmittal AB-03-147 dated September 26, 2003, and 45 C.F.R. § 5b.9

Prepared By: Freedom of Information Group, CMS (July 12, 2004)

FEE INVOICING GUIDANCE AND INSTRUCTIONS

EXHIBIT H

FORM CMS-632: Cost Compilation

A. Fill out, completely and accurately, a Form CMS-632 for each FOIA request processed within the component.

A. Form CMS-632 (see Exhibit D) must be prepared if measurable search time was expended (requesters may be charged search time even though no documents were found).

Invoice of Fees for Services

1. Fees are invoiced to the requester on the Form CMS 633. This is a four-part form (included within this Exhibit) which presents the requester with a breakdown of charges assessed for processing the FOIA request. Be sure to fill out the Form CMS-633 completely.

2. When filling out the Form CMS-633, type or print clearly. If you print, be certain to press hard and check to see that all the carbon copies are legible. Invoices which are not properly completed by the responding office will not be pursued for payment.

3. Each of the four parts bears a designation at the bottom, identifying the intended recipient of that copy, i.e., one copy for the files of the releasing office, one copy for the Division of Accounting (to open the receivable account), and two copies for the requester (one of these is to accompany the check for services when it is sent to the Division of Accounting to close the account).

4. When exercising its delegated direct release authority, a CMS component or contractor will prepare an Invoice of Fees for each request where the fees exceed \$25.00.

5. Two copies of the invoice will be sent to the requester with the materials being released, with instructions to forward one copy of the invoice with payment to the Division of Accounting, P.O. Box 7520, Baltimore, Maryland 21207-0520.

6. One copy of the invoice is to be sent by the releasing office to the Division of Accounting at the time the documents are released so that a receivable account can be opened.

7. If the releasing office is requesting payment in advance of the release of the materials, because of the size of the bill or concern over the requester's willingness or ability to pay, the releasing office should send two copies of the invoice with its request for advance payment. In these cases, the requester will be instructed to send one copy of the invoice along with the check for payment of the fees (made out to CMS) back to the releasing office. Since this is in contradiction to the instructions printed on the invoice itself, be very sure to explain this variance to the requester and make it clear that the advance payment should be sent to the releasing office, not the Division of Accounting. In such cases, checks must still be made out to the "Centers for Medicare & Medicaid Services."

FEE INVOICING GUIDANCE AND INSTRUCTIONS

EXHIBIT H

8. Because requesters who are asked for advance payment frequently decline to pursue their requests when notified of the costs and therefore, do not respond in any way to the advance payment request, the letter should contain a request for a response within a specified time period beyond which the request will be considered canceled, e.g. "If we do not receive your check for the (give estimated amount) cost of providing the materials you have requested within 20 days, we will consider your request canceled and take no further action to provide the material requested."

9. To prevent the unnecessary opening of receivable accounts which would remain open indefinitely should the requester decline to make advance payment, retain the copy of the invoice marked for the Division of Accounting until the advance payment has been received. If payment is not received in the specified time period, or if the requester cancels the request upon notification of the costs, close the case, destroy the Division of Accounting copy of the invoice, and print "request canceled" across the remaining copies.

10. If the requested advance is received, the releasing office will process the request, send the material to the requester, and forward the check and the requester's copy of the invoice and the Division of Accounting copy of the invoice to the Division of Accounting, at the above address, so that the account can be opened and payment recorded at the same time.

Filling Out the Invoice

Case Number

An essential requirement of the automated FOIA Fees Accounting System is the ability to match incoming checks with the proper account pending for payment. Since many requesters make multiple FOIA requests, name identification alone is not adequate to assure proper accounting.

Other Items on the Invoice

A. Date

This is the date that the material and invoice are mailed to the requester. If more than one package is sent to a requester for one FOIA request, the invoice should be sent with the final response.

B. Material Requested

This is a brief description of the requested documents. For example: cost report, St. Joseph's Hospital; customary charge profile, or State plan amendment. If the request is for multiple items, identify category of material, e.g., cost reports for several Chicago hospitals; or list first item and add "plus other documents."

FEE INVOICING GUIDANCE AND INSTRUCTIONS

EXHIBIT H

C. Name of Requester

This line must show the name of the person who signed the request letter. The name of the organization, if any, will be entered on the next line.

D. Organization

This line must show the name of the organization, as shown on the letterhead of the request. If the letter or envelope does not indicate any organizational affiliation, enter N/A on this line.

E. Street Address

The full street address must be entered here, even if the requester is going to pick up or send a messenger for the requested documents.

NOTE: The agency accounting office will be unable to pursue unpaid bills unless all of the information is accurately and completely filled out.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



JSM/TDL-10279, 05-13-10

MEMORANDUM

DATE: May 19, 2010

FROM: Director, Freedom of Information Group
Office of Executive Operations and Regulatory Affairs

Director, Medicare Contractor Management Group
Center for Medicare

SUBJECT: Freedom of Information Act (FOIA) Instructions

TO: All Fiscal Intermediaries (FIs), Carriers, Durable Medical
Equipment Medicare Administrative Contractors (DME MACs),
and Part A and Part B Medicare Administrative Contractors
(A/B MACs)

President Obama has made transparency, accountability and openness a cornerstone of our mission across government. The Centers for Medicare & Medicaid Services (CMS) is committed to fulfilling the President's vision by working together to meet the requirements of the hallmark Open Government Directive issued by the White House on December 8, 2009. The Directive can be found at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf.

One critical component of the Open Government Directive is improved compliance with the Freedom of Information Act (FOIA) by reducing backlogged FOIA requests by 10 percent per year. In order to respond to this directive, CMS is refining certain Medicare claims contractor instructions related to FOIAs. Please note that this does not supersede the annual reporting requirements, which each contractor will continue to be required to complete at the close of the fiscal year.

Monthly FOIA Report

Effective with the Monthly FOIA Report for May 2010 (due June 7, 2010), Medicare claims contractors shall submit FOIA information, in accordance with the attached revised template. The revised report includes the following additional data elements:

- Beginning Pending (i.e., the number of FOIA requests pending as of the last day of the month preceding the reporting month);
- Number of FOIA requests received during the reporting month by source of receipt;
- Number of FOIA requests processed during the reporting month;
- Ending Pending (i.e. the number of FOIA requests pending as of the last day of the reporting month, classified by number of days pending and by source of receipt.)

FOIA Requests Referred by CMS' Regional Offices and the Freedom of Information Group (FIG)

Effective immediately, for all FOIA requests referred to the Medicare claims contractors by CMS' Regional Offices and FIG, the Medicare claims contractors shall send a copy of the letter responding to the inquiry (including any delinquent/fee-related closure letter described below) to the originating CMS office. Medicare claims contractors shall send a copy of the letter only, not the material provided. This is necessary so that CMS can close out the pending inquiry, in order to report accurate information on the status of FOIA requests to the Department of Health and Human Services (DHHS) and the Department of Justice (DOJ). Medicare claims contractors shall send copies of responsive letters to the originating CMS' office as the letters are released to the requestors. Medicare claims contractors shall include the CMS' FOIA Control Number on the correspondence sent back to the originating CMS office.

Currently, CMS is showing a backlog of cases that were previously forwarded to the Medicare claims contractors, for which a copy of the response has not been received. CMS' Regional Offices will be contacting you with a list of these cases that are pending in its system requesting a copy of the responsive correspondence.

Delinquent List/Fee-Related Closure

If a Medicare contractor receives a FOIA request from an individual or organization that is currently on the FOIA delinquency listing, the contractor shall send the requesting party a delinquency denial letter, advising the requestor that his/her request will not be processed, and immediately close out the case. Should the requestor subsequently pay the outstanding delinquent balance and any related fees, the requestor may resubmit a new FOIA request for the records.

If a Medicare contractor ascertains that processing a FOIA request will exceed the \$250 threshold and require prepayment, the contractor shall send the FOIA requestor an advance payment letter, advising the requestor that they shall remit payment within 20 (calendar) days from the date of the letter. If the requested advance payment is not received within 20 days, the contractor shall promptly close out the FOIA request.

NOTE: MEDICARE ADMINISTRATIVE CONTRACTORS (MACs)**DME MAC Contract Numbers**

Jurisdiction A ~ HHSM-500-2006-M0001Z

Jurisdiction B ~ HHSM-500-2006-M0002Z

Jurisdiction C ~ HHSM-500-2006-M0006Z

Jurisdiction D ~ HHSM-500-2006-M0004Z

A/B MAC Contract Numbers

Jurisdiction 1 ~ HHSM-500-2008-M0002Z

Jurisdiction 3 ~ HHSM-500-2006-M0005Z

Jurisdiction 4 ~ HHSM-500-2007-M0001Z

Jurisdiction 5 ~ HHSM-500-2007-M0002Z

Jurisdiction 9 ~ HHSM-500-2008-M0008Z

Jurisdiction 10~HHSM-500-2009-M0004Z

Jurisdiction 12~HHSM-500-2008-M0001Z

Jurisdiction 13~HHSM-500-2008-M0004Z

Jurisdiction 14~HHSM-500-2009-M0002Z

This Joint Signature Memorandum is being issued to you as technical direction under your MAC contract and has been approved by your Project Officer. This technical direction is not construed as a change or intent to change the scope of work under the contract and is to be acted upon only if sufficient funds are available. In this regard, your attention is directed to the clause of the General Provisions of the contract entitled Limitation of Cost, FAR 52.232-20. If the Contractor considers anything contained herein to be outside of the current scope of the contract, or contrary to any of its terms or conditions, the Contractor shall immediately notify the Contracting Officer in writing as to the specific discrepancies and any proposed corrective action.

Should you require further technical clarification, you may contact your Project Officer. Contractual questions should be directed to your CMS Contracting Officer. Please copy the Project Officer and Contracting Officer on all electronic and/or written correspondence in relation to this technical direction letter.

If you are an FI or carrier and have any questions, please contact Michael Marquis at michael.marquis@cms.gov.

/s/
Michael S. Marquis

/s/
Karen Jackson

Attachment

cc: **(JSM/TDL-xxxxx has been approved by the MAC Project Officers)**

Andrew Conn, National Heritage Insurance Company

Dorothy W. Pines, National Heritage Insurance Company

David Barnett, National Government Services, Inc

Joel Allegier, National Government Services, Inc

Melissa Kirchenbauer, CIGNA Government Services, LLC

Robert Madgett, CIGNA Government Services, LLC

Emy Stenerson, Noridian Administrative Services

Paul O'Donnell, Noridian Administrative Services

Karla Thormodson, Noridian Administrative Services

Scott Manning, TrailBlazer Health Enterprises

Rob Solomon, TrailBlazer Health Enterprises

Kris Martin, Wisconsin Physicians Service Health Insurance Corporation

Frances Dye, Wisconsin Physicians Service Health Insurance Corporation

Mike Barlow, Palmetto GBA

Larry Leslie, Palmetto GBA

David Vaughan, Highmark Medicare Services, Inc.

Beth Dum, Highmark Medicare Services, Inc.

Scott Kimbell, National Government Services, Inc

Stacie Amburn, National Government Services, Inc

Lamar James, First Coast Service Options, Inc.

Marco Turner, First Coast Service Options, Inc.

Harvey Dikter, First Coast Service Options, Inc.

Robert Harrington, National Heritage Insurance Company

Scott Shelton, Cahaba Government Benefit Administrators

Fred Schlich, Cahaba Government Benefit Administrators

All RAs

Nanette Foster Reilly, Consortium Administrator for Financial Management and
Fee-for-Service Operations

Kathy Markman, OAGM

Linda Hook, OAGM

Cathy Baldwin, OAGM

Brenda Clark, OAGM

Holly Lane, OAGM

John Webster, OAGM

James T. VanderDonck, OAGM

Melanie Jones, OAGM

Tina Honey, OAGM

Alice Calabro, OAGM

Salem Fussell, OAGM

Marybeth Jason, CM/MCMG

Steven Smetak, CM/MCMG

James Massa, CM/MCMG

James Throne, CM/MCMG

Amy Drake, CM/MCMG
Lindsey Kittrell, CM/MCMG
Pam Bragg, CM/MCMG
Terry Bird, CM/MCMG
Bobbie Sullivan, CM/MCMG
Ed Lain, CM/MCMG
Martin Furman, CM/MCMG
Marilyn Bryan, CM/MCMG
Pat Williams, CM/MCMG
Larry Young, CM/MCMG
Jody Kurtenbach, CM/MCMG

CMS MONTHLY FOIA REPORT

Contractor Name _____
Contractor Numbers _____
Month / Year of Data _____
Date Submitted _____

FOIA Point of Contact _____
Address _____

Phone Number _____
Fax Number _____

Source of FOIA Request	Received and Processed				Aged Pending				Type of Processed								
	1. Beginning Pending	2. Number of FOIA Requests Recd During Reporting Month	3. Number of FOIA Requests Processed During Reporting Month	4. Ending Pending	4.a. Pending 0-20 Workdays	4.b. Pending 21-40 Workdays	4.c. Pending 41-60 Workdays	4.d. Pending Over 60 Workdays	5. Direct Replies	6. Requests Withdrawn	7. Records Not Reasonably Described	8. Fee Related Closures	9. Delinquent List Closures	10. No Records Found	11. Not FOIA	12. Subpoena Denials	13. Other
CO - Freedom of Info. Group																	
Regional Office 1																	
Regional Office 2																	
Regional Office 3																	
Regional Office 4																	
Regional Office 5																	
Regional Office 6																	
Regional Office 7																	
Regional Office 8																	
Regional Office 9																	
Regional Office 10																	
CMS SUBTOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PUBLIC TOTAL																	
GRAND TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

CMS MONTHLY FOIA REPORT

Contractor Name _____
Contractor Numbers _____
Month / Year of Data _____
Date Submitted _____

 FOIA Point of Contact _____
 Address _____

 Phone Number _____
 Fax Number _____

Source of FOIA Request	Received and Processed				Contractor Costs					
	1. Beginning Pending	2. Number of FOIA Requests Recd During Reporting Month	3. Number of FOIA Requests Processed During Reporting Month	4. Ending Pending	14. Staff Hours	15. Staff Charges (inc. computer-based costs)	16. Copy Charges	17. Postage	18. Fees Charged	19. Fees Waived
CO - Freedom of Info. Group										
Regional Office 1										
Regional Office 2										
Regional Office 3										
Regional Office 4										
Regional Office 5										
Regional Office 6					ONLY ENTER GRAND TOTALS FOR THIS SECTION					
Regional Office 7										
Regional Office 8										
Regional Office 9										
Regional Office 10										
CMS SUBTOTAL	0	0	0	0						
PUBLIC TOTAL										
GRAND TOTAL	0	0	0	0						

	KEY	
1	Beginning Pending	The number of FOIA requests pending as of the last day of the month preceding the reporting month.
2	Number of FOIA Requests Rec'd During Reporting Month	Number of FOIA requests received during the reporting month by source of receipt.
3	Number of FOIA Requests Processed During Reporting Month	Number of FOIA requests processed during the reporting month.
4	Ending Pending	The number of FOIA requests pending as of the last day of the reporting month, classified by number of days pending and by source of receipt. Note: Ending Pending should equal Cell 1 + Cell 2 - Cell 3.
4a	<i>Pending 0-20 Workdays</i>	
4b	<i>Pending 21-40 Workdays</i>	
4c	<i>Pending 41-60 Workdays</i>	
4d	<i>Pending Over 60 Workdays</i>	
5	Direct Replies	
6	Requests Withdrawn	
7	Records Not Reasonably Described	
8	Fee Related Closures	
9	Delinquent List Closures	
10	No Records Found	
11	Not FOIA	
12	Subpoena Denials	
13	Other	Closures for any other reason not already cited.
14	Staff Hours	
15	Staff Charges (inc. computer-based costs)	
16	Copy Charges	
17	Postage	
18	Fees Charged	
19	Fees Waived	

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



JSM/TDL- 11241, 03-16-11

MEMORANDUM

DATE: March 23, 2011

FROM: Director, Freedom of Information Group
Office of Strategic Operations and Regulatory Affairs

Director, Medicare Contractor Management Group
Center for Medicare

SUBJECT: Freedom of Information Act (FOIA) Monthly Reporting Instructions

TO: All Fiscal Intermediaries (FIs), Carriers, Durable Medical
Equipment Medicare Administrative Contractors (DME MACs),
and Part A and Part B Medicare Administrative Contractors
(A/B MACs)

Monthly FOIA Report

Effective immediately, Medicare claims administration contractors shall submit monthly FOIA statistical information, in accordance with the attached revised template - Microsoft Excel spreadsheet. Medicare claims administration contractors shall disregard the monthly FOIA reporting requirements contained in the Centers for Medicare & Medicaid Services (CMS) Freedom of Information Act (FOIA) Policy and Procedural Guide located at the following Web site:

<http://www.cms.gov/FOIA/downloads/CMSFOIAPOLICYProceduralGuide.pdf>

Naming Convention for the Workload Data Report

The following naming convention shall be utilized when transmitting the monthly reports to the Freedom of Information Group:

Year Month Last Date of Month Contractor Name Jurisdiction Number (or note legacy) FOIA
Workload. xlsx

For example, a report for February 2011 from NHIC J14 shall have the following naming convention:

2011 0228 NHIC J14 FOIA Workload.xlsx

E-mail Address for Monthly Spreadsheet Submission

Medicare claims administration contractors shall submit monthly FOIA statistical reports, via e-mail to the CMS FOIA Officer at: FOIA_Officer@cms.hhs.gov.

Please copy your Medicare Contractor Management Group (MCMG) Contracting Officer's Technical Representative (COTR) or Contractor Manager on electronic and/or written correspondence in relation to this provision.

Due Dates

Effective immediately, Medicare claims administration contractors shall provide workload data for January 2011 and February 2011 to the CMS FOIA Officer **by March 31, 2011**. Beginning with the Monthly FOIA Report for March 2011 and continuing until further notice, Medicare claims administration contractors shall submit statistical workload reports to the CMS FOIA Officer **by close of business (COB) the fifth workday following the end of the reporting month**. Therefore, the monthly FOIA Report for **March is due to CMS by COB April 7, 2011**.

NOTE: MEDICARE ADMINISTRATIVE CONTRACTORS (MACs)

DME MAC Contract Numbers

Jurisdiction A ~ HHSM-500-2006-M0001Z
 Jurisdiction B ~ HHSM-500-2010-M0003Z
 Jurisdiction C ~ HHSM-500-2006-M0006Z
 Jurisdiction D ~ HHSM-500-2006-M0004Z

A/B MAC Contract Numbers

Jurisdiction 1 ~ HHSM-500-2008-M0002Z
 Jurisdiction 3 ~ HHSM-500-2006-M0005Z
 Jurisdiction 4 ~ HHSM-500-2007-M0001Z
 Jurisdiction 5 ~ HHSM-500-2007-M0002Z
 Jurisdiction 9 ~ HHSM-500-2008-M0008Z
 Jurisdiction 10~HHSM-500-2009-M0004Z
 Jurisdiction 11~HHSM-500-2010-M0001Z
 Jurisdiction 12~HHSM-500-2008-M0001Z
 Jurisdiction 13~HHSM-500-2008-M0004Z
 Jurisdiction 14~HHSM-500-2009-M0002Z
 Jurisdiction 15~HHSM-500-2010-M0002Z

This Joint Signature Memorandum/Technical Direction Letter (JSM/TDL) is being issued to you as technical direction under your MAC contract and has been approved by your

Contracting Officer's Technical Representative (COTR). This technical direction is not construed as a change or intent to change the scope of work under the contract and is to be acted upon only if sufficient funds are available. In this regard, your attention is directed to the clause of the General Provisions of your contract entitled Limitation of Funds, FAR 52.232-22 or Limitation of Cost, FAR 52.232-20 (as applicable). If the Contractor considers anything contained herein to be outside of the current scope of the contract, or contrary to any of its terms or conditions, the Contractor shall immediately notify the Contracting Officer in writing as to the specific discrepancies and any proposed corrective action.

Should you require further technical clarification, you may contact your COTR. Contractual questions should be directed to your CMS Contracting Officer. Please copy the COTR and Contracting Officer on all electronic and/or written correspondence in relation to this technical direction letter.

If you are an FI or carrier and have any questions, please contact Michael Marquis at michael.marquis@cms.gov .

/s/
Michael S. Marquis

/s/
Karen Jackson

Attachment

cc:

Andrew Conn, National Heritage Insurance Company
 Dorothy W. Pines, National Heritage Insurance Company
 David Barnett, National Government Services, Inc
 Joel Allegier, National Government Services, Inc
 Melissa Kirchenbauer, CIGNA Government Services, LLC
 Robert Madgett, CIGNA Government Services, LLC
 Emy Stenerson, Noridian Administrative Services
 Paul O'Donnell, Noridian Administrative Services
 Karla Thormodson, Noridian Administrative Services
 Scott Manning, TrailBlazer Health Enterprises
 Rob Solomon, TrailBlazer Health Enterprises
 Kris Martin, Wisconsin Physicians Service Health Insurance Corporation
 Frances Dye, Wisconsin Physicians Service Health Insurance Corporation
 Mike Barlow, Palmetto GBA
 Larry Leslie, Palmetto GBA
 Neal Burkhead, Palmetto GBA
 Laura Minter, Highmark Medicare Services, Inc.
 Beth Dum, Highmark Medicare Services, Inc.
 Jim Elmore, National Government Services, Inc
 Scott Kimbell, National Government Services, Inc
 Stacie Amburn, National Government Services, Inc
 Lamar James, First Coast Service Options, Inc.

Marco Turner, First Coast Service Options, Inc.
Harvey Dikter, First Coast Service Options, Inc.
Robert Harrington, National Heritage Insurance Company
Scott Shelton, Cahaba Government Benefit Administrators
Fred Schlich, Cahaba Government Benefit Administrators
Melissa Lamb, CIGNA Government Services, LLC

All RAs

Nanette Foster Reilly, Consortium Administrator for Financial Management and
Fee-for-Service Operations

Kathy Markman, OAGM
Sharon Brause, OAGM
Linda Hook, OAGM
Cathy Baldwin, OAGM
Holly Lane, OAGM
John Webster, OAGM
Tasha Logan, OAGM
Stacy Greber, OAGM
Geopardi Bost, OAGM
Craig Dash, OAGM
Jason Vollmer, OAGM
Jacob Reinert, OAGM
Brenda Clark, OAGM
James T. VanderDonck, OAGM
Christina Honey, OAGM
Alice Calabro, OAGM
Salem Fussell, OAGM
Edward Farmer, OAGM
Marybeth Jason, CM/MCMG
Steven Smetak, CM/MCMG
James Massa, CM/MCMG
James Throne, CM/MCMG
Amy Drake, CM/MCMG
Lindsey Kittrell, CM/MCMG
Pam Bragg, CM/MCMG
Terry Bird, CM/MCMG
Bobbie Sullivan, CM/MCMG
Ed Lain, CM/MCMG
Martin Furman, CM/MCMG
Marilyn Bryan, CM/MCMG
Pat Williams, CM/MCMG
Larry Young, CM/MCMG
David Banks, CM/MCMG
Jody Kurtenbach, CM/MCMG

Contractor Monthly FOIA Report

03/28/2011

<u>FY 2011</u>	Contractor Name & Jurisdiction Drop Down Box
MONTH Drop down box	
<i>Contact Name:</i>	
<i>Email Address:</i>	
<i>Contact Number:</i>	
	1. FOIA Requests received from CMS during the month:
	2. FOIA Requests received from CMS processed during the month:
	3. FOIA Requests received from CMS pending as of month end:
	4. FOIA Requests received from CMS pending at month end > 20 work days from date of receipt:
	<i>NOTE: CMS information is tallied through the SWIFT system, so those number should not be included below this point.</i>
	5. FOIA Requests contractor received from Public during the month:
	6. FOIA Requests contractor processed from Public during the month:
	7. FOIA Requests contractor referred to CMS during the month:
	8. FOIA Requests contractor received from Public pending as of month end:
	9. FOIA Requests contractor received from Public pending at month end > 20 work days from date of rec
	10. Staffing by FTE

RAC Impact Definitions

Report Criteria	Description	Definition
Contractor Name & Number		Drop down box - Select your contractor name and number.
FY 2010		Enter the current Fiscal Year as FYXXXX.
MONTH		Drop down box - Select the month that this report represents.
Contact Name:		Enter the name of the FOIA contact person.
Email Address:		Enter the FOIA contacts' email address.
Contact Number:		Enter the phone number for the FOIA contact.
1. FOIA Requests received from CMS during the month:		The number of Freedom of Information Act requests made to CMS and referred to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest.
2. FOIA Requests received from CMS processed during the month:		The number of Freedom of Information Act requests referred by CMS to a CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the CMS contractor issued a decision to grant all, some, or none of the requested records in response to the FOIA request.
3. FOIA Requests received from CMS pending as of month end:		The number of Freedom of Information Act requests made to CMS and referred to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the Contractor has not taken final processing action to fulfill all aspects of the requests and the requests are not fulfilled as of the last day of the reporting month.
4. FOIA Requests received from CMS pending at month end > 20 work days from date of receipt:		The number of Freedom of Information Act requests made to CMS and referred to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the Contractor has not taken final processing action to fulfill all aspects of the requests and the request is more than 20 workdays from date of receipt as of the last day of the reporting month.
NOTE: CMS information is tallied through the SWIFT system, so those numbers should not be included below this point.		
5. FOIA Requests contractor received from Public during the month:		The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest.
6. FOIA Requests contractor processed from Public during the month:		The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the CMS contractor issued a final decision to grant all, some, or none of the requested records in response to the FOIA request.
7. FOIA Requests contractor referred to CMS during the month:		The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the CMS contractor didn't issue final disclosure decisions to the requesters, but referred the requests and responsive records to CMS to issue final disclosure decisions to grant all, some, or none of the requested records in response to the FOIA request.

RAC Impact Definitions

8. FOIA Requests contractor received from Public pending as of month end:	<i>The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., “first-party” requests), another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest, for which the Contractor has not taken final processing action to fulfill all aspects of the requests and the requests are not fulfilled as of the last day of the reporting month.</i>
9. FOIA Requests contractor received from Public pending at month end > 20 work days from date of receipt:	<i>The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., “first-party” requests), another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest, for which the Contractor has not taken final processing action to fulfill all aspects of the requests and the requests are more than 20 workdays from date of receipt as of the last day of the reporting month.</i>
10. Staffing by FTE	<i>An “equivalent full-time FOIA employee (FTE)” is created by adding together the percentages of time dedicated to FOIA duties by employees performing less than full-time FOIA duties. Each time 100% is reached, the time expended is counted as one “equivalent full-time FOIA employee.”</i>

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



TDL-11486, 09-27-11

MEMORANDUM

DATE: September 29, 2011

FROM: Director, Openness, Transparency & Accountability Group
Office of Strategic Operations and Regulatory Affairs

Director, Medicare Contractor Management Group
Center for Medicare

TO: All Fiscal Intermediaries (FIs), Carriers, Durable Medical
Equipment Medicare Administrative Contractors (DME MACs),
and Part A and Part B Medicare Administrative Contractors
(A/B MACs)

SUBJECT: Annual Freedom of Information Act (FOIA) Report Data Covering Fiscal
Year 2011

**NOTE: This Technical Direction Letter is in addition to JSM/TDL –11241, dated
March 23, 2011, Freedom of Information Act (FOIA) Monthly Reporting Instructions.**

Annual FOIA Report Data

Each year the Department of Health and Human Services must report to Congress on its implementation of FOIA. The Centers for Medicare & Medicaid Services (CMS) input into the fiscal year (FY) 2011 report (covering the period of October 1, 2010 through September 30, 2011) is due in the Office of the Assistant Secretary for Public Affairs by early November 2011.

As in past years, the CMS FOIA Office will aggregate the information needed, based on data extracted from the reports submitted each month by each component and contractor. However, certain sections of the report are not captured in the monthly reports. Therefore, we are requesting statistical data pertaining to FOIA requests received by A/B MACs, DME MACs, fiscal intermediaries and carriers, hereinafter referred to as Contractors.

Instructions for Completing Pre-programmed Spreadsheet

Tab (Cntr Sheet): A Microsoft Excel tabbed template to record the requested information is attached. The template is pre-programmed with the Contractor names in a drop-down box in the

heading section (Column C, Rows 1 and 2). Additionally, the file naming conventions are specified in the File Naming Tab. Contractors shall utilize the corresponding file name for submission of the required report.

Tab (DATA): CMS is requesting that a data extract, formatted for Microsoft Excel, from the Contractor FOIA database be copied here, including the Contractor FOIA Case #; Date Received; Date Processed/Closed; and a “Y” or “N” as to whether information was granted.

Contractors shall provide data for FOIA requests received directly from the public and not referred from/to CMS for completion.

Date processed /closed should remain blank if the request has not been completely fulfilled at close of business on September 30, 2011.

If the request was received prior to October 1, 2010, and closed between October 1, 2010 and September 30, 2011, the data must be included in this tab.

Tab (File Naming): This tab contains the required naming conventions. Contractors shall utilize the corresponding file name for submission of the required report.

Due Date for Pre-programmed Spreadsheet

Contractors shall submit monthly FOIA statistical report (lines 1 – 10) for September 2011 with the additional annual report data (lines 11 – 23) via e-mail to the CMS FOIA Officer at: **FOIA_Officer@cms.hhs.gov** by close of business **October 7, 2011**.

Monthly Reporting Requirements (JSM/TDL –11241, dated March 23, 2011)

Contractors will continue to use this new spreadsheet throughout the year, completing monthly, only items 1 through 10. The complete spreadsheet items 1 through 23 will again be due with the September 2012 report.

If you have any questions, please contact Michael Marquis, CMS Freedom of Information Officer, via e-mail at: **michael.marquis@cms.hhs.gov** with a cc: to Diane Stafford, via e-mail at: **diane.stafford@cms.hhs.gov**.

Thank you in advance for your cooperation.

NOTE: MEDICARE ADMINISTRATIVE CONTRACTORS (MACs)

DME MAC Contract Numbers

Jurisdiction A ~ HHSM-500-2006-M0001Z

Jurisdiction B ~ HHSM-500-2010-M0003Z

Jurisdiction C ~ HHSM-500-2006-M0006Z

Jurisdiction D ~ HHSM-500-2011-M0002Z

A/B MAC Contract Numbers

Jurisdiction 1 ~ HHSM-500-2008-M0002Z
 Jurisdiction 3 ~ HHSM-500-2006-M0005Z
 Jurisdiction 4 ~ HHSM-500-2007-M0001Z
 Jurisdiction 5 ~ HHSM-500-2007-M0002Z
 Jurisdiction 9 ~ HHSM-500-2008-M0008Z
 Jurisdiction 10~HHSM-500-2009-M0004Z
 Jurisdiction 11~HHSM-500-2010-M0001Z
 Jurisdiction 12~HHSM-500-2008-M0001Z
 Jurisdiction 13~HHSM-500-2008-M0004Z
 Jurisdiction 14~HHSM-500-2009-M0002Z
 Jurisdiction 15~HHSM-500-2010-M0002Z

This Technical Direction Letter (TDL) is being issued to you as technical direction under your MAC contract and has been approved by your Contracting Officer's Technical Representative (COTR). This technical direction is not construed as a change or intent to change the scope of work under the contract and is to be acted upon only if sufficient funds are available. In this regard, your attention is directed to the clause of the General Provisions of your contract entitled Limitation of Funds, FAR 52.232-22 or Limitation of Cost, FAR 52.232-20 (as applicable). If the Contractor considers anything contained herein to be outside of the current scope of the contract, or contrary to any of its terms or conditions, the Contractor shall immediately notify the Contracting Officer in writing as to the specific discrepancies and any proposed corrective action.

Should you require further technical clarification, you may contact your COTR. Contractual questions should be directed to your CMS Contracting Officer. Please copy the COTR and Contracting Officer on all electronic and/or written correspondence in relation to this technical direction letter.

If you are an FI or carrier and have any questions, please contact Michael Marquis via email at: michael.marquis@cms.hhs.gov.

/s/
Janis Nero

/s/
Karen Jackson

Attachment

Andrew Conn, National Heritage Insurance Company
 Dorothy W. Pines, National Heritage Insurance Company
 David Barnett, National Government Services, Inc
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 Melissa Kirchenbauer, CGS Administrators, LLC
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Scott Manning, TrailBlazer Health Enterprises
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Edward Farmer, OAGM
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Linda Hook, OAGM
Christina Honey, OAGM
Holly Lane, OAGM
Tasha Logan, OAGM
Michael Shirk, OAGM
Kathy Markman, OAGM
Jacob Reinert, OAGM
James Wilkerson, OAGM
Jason Vollmer, OAGM
John Webster, OAGM
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Terry Bird, CM/MCMG

Pam Bragg, CM/MCMG
Amy Drake, CM/MCMG
Marybeth Jason, CM/MCMG
Brian Johnson, CM/MCMG
Lindsey Kittrell, CM/MCMG
James Massa, CM/MCMG
Steven Smetak, CM/MCMG
Bobbie Sullivan, CM/MCMG
James Throne, CM/MCMG
Marilyn Bryan, CM/MCMG
David Banks, CM/MCMG
Jody Kurtenbach, CM/MCMG
Larry Young, CM/MCMG
Carol Messick, CM/MCMG

Contractor Monthly FOIA Report

01/24/2012

FY 2011	
September	
Contact Name:	
Email Address:	
Contact Number:	
C M S	1. FOIA Requests received from CMS during the month
	2. FOIA Requests received from CMS processed during the month
	3. FOIA Requests received from CMS pending as of month end
	4. FOIA Requests received from CMS pending at month end > 20 work days from date of receipt
<small>NOTE: CMS information is tallied through the SWIFT system, so those number should not be included below this point.</small>	
P u b l i c	5. FOIA Requests contractor received from Public during the month
	6. FOIA Requests contractor processed from Public during the month
	7. FOIA Requests contractor referred to CMS during the month
	8. FOIA Requests contractor received from Public pending as of month end
	9. FOIA Requests contractor received from Public pending at month end > 20 work days from date of receipt
	10. Staffing by FTE
Below Relate to Public Requests Only	
<u>Annual Totals Reported only in the September Submission</u>	
P u b l i c O n l y	11. Direct Replies
	12. Invalid Authorizations
	13. Subpoena Denials
	14. Requests Withdrawn
	15. Records Not Reasonably Described
	16. Fee Related Closures
	17. Delinquent List Closures
	18. No Records Found
	19. Not FOIA
	20. Other Reasons For Closure <i>(Excluding cases referred to CMS)</i>
Total Annual Costs (for All FOIA Requests)	
Reported only in the September Submission	
	21. Staff Charges <i>(inc. Computer Based Costs)</i>
	22. Copy Charges
	23. Postage

c o u n t	<u>FOIA Case #</u>	<u>Date Rcvd</u> (mm/dd/yyyy)	<u>Date Processed/Closed</u> (mm/dd/yyyy)	<u>Info Granted</u> Y or N <i>Leave Blank if Open/Pending on 09/30/2011</i>
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RAC Impact Definitions

Report Criteria	Description	Definition
Contractor Name & Number		Drop down box - Select your contractor name and number.
FY 2012		Drop down box - Select the correct Fiscal Year from the Drop Down Box.
October		Drop down box - Select the month that this report represents.
Contact Name:		Enter the name of the FOIA contact person.
Email Address:		Enter the FOIA contacts' email address.
Contact Number:		Enter the phone number for the FOIA contact.
1. FOIA Requests received from CMS during the month:		The number of Freedom of Information Act requests made to CMS and referred to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest.
2. FOIA Requests received from CMS processed during the month:		The number of Freedom of Information Act requests referred by CMS to a CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the CMS contractor issued a decision to grant all, some, or none of the requested records in response to the FOIA request.
3. FOIA Requests received from CMS pending as of month end:		The number of Freedom of Information Act requests made to CMS and referred to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the Contractor has not taken final processing action to fulfill all aspects of the requests and the requests are not fulfilled as of the last day of the reporting month.
4. FOIA Requests received from CMS pending at month end > 20 work days from date of receipt:		The number of Freedom of Information Act requests made to CMS and referred to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the Contractor has not taken final processing action to fulfill all aspects of the requests and the request is more than 20 workdays from date of receipt as of the last day of the reporting month.
NOTE: CMS information is tallied through the SWIFT system, so those numbers should not be included below this point.		
5. FOIA Requests contractor received from Public during the month:		The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest.
6. FOIA Requests contractor processed from Public during the month:		The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the CMS contractor issued a final decision to grant all, some, or none of the requested records in response to the FOIA request.
7. FOIA Requests contractor referred to CMS during the month:		The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the CMS contractor didn't issue final disclosure decisions to the requesters, but referred the requests and responsive records to CMS to issue final disclosure decisions to grant all, some, or none of the requested records in response to the FOIA request.

RAC Impact Definitions

8. FOIA Requests contractor received from Public pending as of month end:	<i>The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the Contractor has not taken final processing action to fulfill all aspects of the requests and the requests are not fulfilled as of the last day of the reporting month.</i>
9. FOIA Requests contractor received from Public pending at month end > 20 work days from date of receipt:	<i>The number of Freedom of Information Act requests submitted by members of the public directly to the CMS contractor for access to records concerning themselves (i.e., "first-party" requests), another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest, for which the Contractor has not taken final processing action to fulfill all aspects of the requests and the requests are more than 20 workdays from date of receipt as of the last day of the reporting month.</i>
10. Staffing by FTE	<i>An "equivalent full-time FOIA employee (FTE)" is created by adding together the percentages of time dedicated to FOIA duties by employees performing less than full-time FOIA duties. Each time 100% is reached, the time expended is counted as one "equivalent full-time FOIA employee."</i>
11. Direct Replies	<i>The number of final disclosure decisions whereby the CMS Contractor released requested records directly to the requesters during the reporting period in accordance with Direct Release Authority delegated to CMS Contractors in the CMS FOIA and Procedural instructions.</i>
12. Invalid Authorizations	<i>The number of invalid authorization responses issued by the CMS Contractor during the reporting period.</i>
13. Subpoena Denials	<i>The number of subpoena denial responses issued by the CMS Contractor during the reporting period.</i>
14. Requests Withdrawn	<i>The number of Freedom of Information Act requests withdrawn directly by members of the public or through the referring CMS Regional Office during the reporting period.</i>
15. Records Not Reasonably Described	<i>The number of Freedom of Information Act requests that were closed by the CMS Contractors because the records were not reasonably described within the incoming Freedom of Information Act request during the reporting period.</i>
16. Fee Related Closures	<i>The number of Freedom of Information Act requests that were closed by the CMS Contractors due to fee-related reasons, i.e., requester's failure to make an advance payment, during the reporting period.</i>
17. Delinquent List Closures	<i>The number of Freedom of Information Act requests that were closed by the CMS Contractors due to fee-related reasons, i.e., requester's failure to pay a delinquent account, during the reporting period.</i>
18. No Records Found	<i>The number of Freedom of Information Act requests that resulted in the CMS Contractor issuing "no records" responses to requesters during the reporting period.</i>
19. Not FOIA	<i>The number of requests that were received but were not Freedom of Information Act requests, and therefore, not processed under FOIA rules, policies, or procedures during the reporting period.</i>
20. Other Reasons For Closure (Excluding cases referred to CMS)	<i>The number of requests that were closed for reasons other than those specified above during the reporting period.</i>
21. Staff Charges (inc. Computer Based Costs)	<i><u>Processing Costs</u> : Add together all costs expended by the agency for processing FOIA requests at the initial request and administrative appeal levels. Include salaries of FOIA personnel, overhead, and any other FOIA-related expenses.</i>
22. Copy Charges	<i><u>Copy Charges</u> : Add together all costs expended by the agency for duplication of responsive records when processing FOIA requests at the initial request and administrative appeal levels.</i>
23. Postage	<i><u>Postage Costs</u> : Add together all costs expended by the agency for standard postal charges for mailing responsive records to fulfill FOIA requests at the initial request and administrative appeal levels.</i>

<u>Contractor Name</u>	<u>September File Name</u>	<u>October File Name</u>
J1 - Palmetto Gov't Business Administrators [PGBA]	2011 09 PGBA J1 FOIA Report.xlsx	2011 10 PGBA J1 FOIA Report.xlsx
J3 - Noridian Administrative Services [NAS]	2011 09 NAS J3 FOIA Report.xlsx	2011 10 NAS J3 FOIA Report.xlsx
J4 - Trailblazers Health Enterprises [THE]	2011 09 THE J4 FOIA Report.xlsx	2011 10 THE J4 FOIA Report.xlsx
J5 - Wisconsin Physician Services [WPS]	2011 09 WPS J5 FOIA Report.xlsx	2011 10 WPS J5 FOIA Report.xlsx
J9 - First Coast Service Options [FCSO]	2011 09 FCSO J9 FOIA Report.xlsx	2011 10 FCSO J9 FOIA Report.xlsx
J10 - Cahaba Gov't Benefits Administrators [CGBA]	2011 09 CGBA J10 FOIA Report.xlsx	2011 10 CGBA J10 FOIA Report.xlsx
J11 - Palmetto Gov't Business Administrators [PGBA]	2011 09 PGBA J11 FOIA Report.xlsx	2011 10 PGBA J11 FOIA Report.xlsx
J12 - Highmark Medicare Services [HMS]	2011 09 HMS J12 FOIA Report.xlsx	2011 10 HMS J12 FOIA Report.xlsx
J13 - National Government Services [NGS]	2011 09 NGS J13 FOIA Report.xlsx	2011 10 NGS J13 FOIA Report.xlsx
J14 - National Heritage Ins. Company [NHIC]	2011 09 NHIC J14 FOIA Report.xlsx	2011 10 NHIC J14 FOIA Report.xlsx
J15 - CIGNA Government Services [CGS]	2011 09 CGBA J15 FOIA Report.xlsx	2011 10 CGBA J15 FOIA Report.xlsx
JA - National Heritage Ins. Company [NHIC]	2011 09 NHIC JA FOIA Report.xlsx	2011 10 NHIC JA FOIA Report.xlsx
JB - National Government Services [NGS]	2011 09 NGS JB FOIA Report.xlsx	2011 10 NGS JB FOIA Report.xlsx
JC - CIGNA Government Services [CGS]	2011 09 CGS JC FOIA Report.xlsx	2011 10 CGS JC FOIA Report.xlsx
JD - Noridian Administrative Services [NAS]	2011 09 NAS JD FOIA Report.xlsx	2011 10 NAS JD FOIA Report.xlsx
Legacy - Cahaba Gov't Benefits Administrators [CGBA]	2011 09 CGBA L FOIA Report.xlsx	2011 10 CGBA L FOIA Report.xlsx
Legacy - CIGNA Government Services [CGS]	2011 09 CGS L FOIA Report.xlsx	2011 10 CGS L FOIA Report.xlsx
Legacy - National Government Services [NGS]	2011 09 NGS L FOIA Report.xlsx	2011 10 NGS L FOIA Report.xlsx
Legacy - Noridian Administrative Services [NAS]	2011 09 NAS L FOIA Report.xlsx	2011 10 NAS L FOIA Report.xlsx
Legacy - Pinnacle Government Business Systems [PBSI]	2011 09 PBSI L FOIA Report.xlsx	2011 10 PBSI L FOIA Report.xlsx
Legacy - Wisconsin Physician Services [WPS]	2011 09 WPS L FOIA Report.xlsx	2011 10 WPS L FOIA Report.xlsx

Each month the only change will be the month number i.e. 10 - 11 - 12, etc.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



JSM/TDL - 11110, 12-22-10

MEMORANDUM

DATE: January 21, 2011

FROM: Director, Freedom of Information Group,
Office of Strategic Operations and Regulatory Affairs

Director, Medicare Contractor Management Group
Center for Medicare

SUBJECT: Instructions to Process the Centers for Medicare & Medicaid Services (CMS)
Referred Requests for Beneficiary Records

TO: All Fiscal Intermediaries (FIs), Carriers, Durable Medical
Equipment Medicare Administrative Contractors (DME MACs),
and Part A and Part B Medicare Administrative Contractors
(A/B MACs)

The CMS is committed to fulfilling President Obama's vision by working together to meet the requirements of the hallmark Open Government Directive issued by the White House on December 8, 2009. One critical component of the Open Government Directive is compliance with the Freedom of Information Act (FOIA) timelines for processing FOIA requests.

To ensure that requests for beneficiary records are processed in a timely manner, all FOIA requests for beneficiary records received by CMS offices are thoroughly reviewed to confirm that they include all of the necessary documentation to fulfill the request. There are basic core elements in a valid request. These include the signature of the individual and the date. If the authorization is signed by a personal representative of the individual for whom records are being requested, proof of authority to represent him/her must be attached to the authorization. The authorization must also contain a basic description identifying the information to be disclosed. It must include the name or other specific identification of the person(s) or entity to which the requested disclosure is to be made, along with an expiration date or an expiration event that relates to the individual or the purpose of the disclosure, and language on revoking the authorization at any time. (NOTE: If no time frame is given, we must assume that the consent is for a one-time-only disclosure). For more information on valid authorizations, please visit: https://www.cms.gov/FOIA/03_filehow.asp

Since CMS's offices perform this assessment, any FOIA request for beneficiary records and supporting documentation referred to a Medicare claims contractor is understood to be reviewed and approved by the originating CMS office, and is, therefore, considered valid on its face. Effective immediately, all FOIA requests for beneficiary records referred to Medicare claims contractors by CMS's regional offices and Freedom of Information Group (FIG) shall be processed by Medicare claims contractors without delay in accordance with the Part A/B MAC SOW C.5.23.10 or CFR Part 5, Chapter 6 of the Program Manual Pub 100-1. If, however, there is an obvious oversight, immediately contact the referring CMS Regional Office FOIA Coordinator or FIG contact.

For FOIA requests for beneficiary records that are received directly from the public by the Medicare claims contractors, you may deny any invalid requests (i.e., do not meet CMS requirements) by issuing a denial letter directly to the requester. It is not necessary for the Medicare claims contractors to send a copy of the denial letter and/or records to CMS Offices since these are cases owned by the Medicare claims contractors.

NOTE: MEDICARE ADMINISTRATIVE CONTRACTORS (MACs)

DME MAC Contract Numbers

Jurisdiction A ~ HHSM-500-2006-M0001Z
 Jurisdiction B ~ HHSM-500-2006-M0002Z
 Jurisdiction C ~ HHSM-500-2006-M0006Z
 Jurisdiction D ~ HHSM-500-2006-M0004Z

A/B MAC Contract Numbers

Jurisdiction 1 ~ HHSM-500-2008-M0002Z
 Jurisdiction 3 ~ HHSM-500-2006-M0005Z
 Jurisdiction 4 ~ HHSM-500-2007-M0001Z
 Jurisdiction 5 ~ HHSM-500-2007-M0002Z
 Jurisdiction 9 ~ HHSM-500-2008-M0008Z
 Jurisdiction 10~HHSM-500-2009-M0004Z
 Jurisdiction 11~HHSM-500-2010-M0001Z
 Jurisdiction 12~HHSM-500-2008-M0001Z
 Jurisdiction 13~HHSM-500-2008-M0004Z
 Jurisdiction 14~HHSM-500-2009-M0002Z
 Jurisdiction 15~HHSM-500-2010-M0002Z

This Joint Signature Memorandum/Technical Direction Letter (JSM/TDL) is being issued to you as technical direction under your MAC contract and has been approved by your Contracting Officer's Technical Representative (COTR). This technical direction is not construed as a change or intent to change the scope of work under the contract and is to be acted upon only if sufficient funds are available. In this regard, your attention is directed to the clause of the General Provisions of your contract entitled Limitation of Funds, FAR 52.232-22 or Limitation of Cost, FAR 52.232-20 (as applicable). If the Contractor considers anything

contained herein to be outside of the current scope of the contract, or contrary to any of its terms or conditions, the Contractor shall immediately notify the Contracting Officer in writing as to the specific discrepancies and any proposed corrective action.

Should you require further technical clarification, you may contact your COTR. Contractual questions should be directed to your CMS Contracting Officer. Please copy the COTR and Contracting Officer on all electronic and/or written correspondence in relation to this technical direction letter.

If you are an FI or carrier and have any questions, please contact the Freedom of Information Group on (410) 786-5353.

/s/
Michael Marquis

/s/
Karen Jackson

cc:

Andrew Conn, National Heritage Insurance Company
 Dorothy W. Pines, National Heritage Insurance Company
 David Barnett, National Government Services, Inc
 Joel Allegier, National Government Services, Inc
 Melissa Kirchenbauer, CIGNA Government Services, LLC
 Robert Madgett, CIGNA Government Services, LLC
 Emy Stenerson, Noridian Administrative Services
 Paul O'Donnell, Noridian Administrative Services
 Karla Thormodson, Noridian Administrative Services
 Scott Manning, TrailBlazer Health Enterprises
 Rob Solomon, TrailBlazer Health Enterprises
 Kris Martin, Wisconsin Physicians Service Health Insurance Corporation
 Frances Dye, Wisconsin Physicians Service Health Insurance Corporation
 Mike Barlow, Palmetto GBA
 Larry Leslie, Palmetto GBA
 Neal Burkhead, Palmetto GBA
 David Vaughan, Highmark Medicare Services, Inc.
 Beth Dum, Highmark Medicare Services, Inc.
 Jim Elmore, National Government Services, Inc
 Scott Kimbell, National Government Services, Inc
 Stacie Amburn, National Government Services, Inc
 Lamar James, First Coast Service Options, Inc.
 Marco Turner, First Coast Service Options, Inc.
 Harvey Dikter, First Coast Service Options, Inc.
 Robert Harrington, National Heritage Insurance Company
 Scott Shelton, Cahaba Government Benefit Administrators
 Fred Schlich, Cahaba Government Benefit Administrators
 Melissa Lamb, CIGNA Government Services, LLC
 All CAs, RAs, and DRAs

Nanette Foster Reilly, Consortium Administrator for Financial Management and
Fee-for-Service Operations

Kathy Markman, OAGM

Sharon Brause, OAGM

Linda Hook, OAGM

Cathy Baldwin, OAGM

Brenda Clark, OAGM

Holly Lane, OAGM

John Webster, OAGM

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Christina Honey, OAGM

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Steven Smetak, CM/MCMG

James Massa, CM/MCMG

James Throne, CM/MCMG

Amy Drake, CM/MCMG

Lindsey Kittrell, CM/MCMG

Pam Bragg, CM/MCMG

Terry Bird, CM/MCMG

Bobbie Sullivan, CM/MCMG

Ed Lain, CM/MCMG

Martin Furman, CM/MCMG

Marilyn Bryan, CM/MCMG

Pat Williams, CM/MCMG

Larry Young, CM/MCMG

David Banks, CM/MCMG

Jody Kurtenbach, CM/MCMG

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



TDL-11405, 07-15-11

MEMORANDUM

DATE: July 26, 2011

FROM: Director, Openness, Transparency & Accountability Group
Office of Strategic Operations and Regulatory Affairs

Director, Medicare Contractor Management Group
Center for Medicare

TO: All Fiscal Intermediaries (FIs), Carriers, Durable Medical
Equipment Medicare Administrative Contractors (DME MACs),
and Part A and Part B Medicare Administrative Contractors
(A/B MACs)

SUBJECT: Freedom of Information Act (FOIA) – CMS Office of Financial Management
Delinquency Listing

**NOTE: This Technical Direction Letter (TDL) supersedes JSM/TDL-10279 issued
May 19, 2010, “Freedom of Information Act (FOIA) Instructions” section entitled
Delinquent List/Fee-Related Closure.**

The Centers for Medicare & Medicaid Services (CMS) Office of Financial Management (OFM) is responsible for the administration of accounts receivables for the Agency. As part of this responsibility, OFM distributes both a weekly and a monthly listing of all individuals or organizations on the accounts receivable delinquent FOIA aging report, by debtor, referred to as the “OFM FOIA delinquency list.” The monthly list is distributed by the 5th of each month and is shared with CMS regional FOIA coordinators. Within 48 hours of receipt, FOIA coordinators will distribute the delinquency listing to their regional FOIA team members and all Medicare contractors within their respective regional jurisdictions.

The Medicare claims administration contractor that receives a FOIA request directly from an individual or organization that is on the delinquency list shall send the requesting party a delinquency denial letter, advising that the request will not be processed, and immediately close the case.

If a Medicare claims administration contractor receives the OFM FOIA delinquency listing and discovers that an individual or organization on the list has an existing FOIA request in process,

the Medicare claims administration contractor shall continue to process the request through completion, without delay. This instruction applies to all FOIA requests at their initial point of origin. Therefore, if a CMS regional office or the CMS Division of Freedom of Information has referred a FOIA request to a CMS contractor, the contractor shall assume that the request was vetted against the OFM FOIA delinquency listing at the time of receipt; the Medicare claims administration contractor shall process it without delay, to completion.

When an individual or organization is cleared from the OFM delinquency list, an email will be sent from OFM to the requester or organization and to the regional office FOIA coordinators. The FOIA coordinators will share the cleared list with their regional FOIA teams and all Medicare claims administration contractors within their respective regional jurisdictions. The cleared listing provides the ROs and contractors with approval to proceed with processing new FOIA requests.

NOTE: MEDICARE ADMINISTRATIVE CONTRACTORS (MACs)

DME MAC Contract Numbers

Jurisdiction A ~ HHSM-500-2006-M0001Z
 Jurisdiction B ~ HHSM-500-2010-M0003Z
 Jurisdiction C ~ HHSM-500-2006-M0006Z
 Jurisdiction D ~ HHSM-500-2011-M0002Z

A/B MAC Contract Numbers

Jurisdiction 1 ~ HHSM-500-2008-M0002Z
 Jurisdiction 3 ~ HHSM-500-2006-M0005Z
 Jurisdiction 4 ~ HHSM-500-2007-M0001Z
 Jurisdiction 5 ~ HHSM-500-2007-M0002Z
 Jurisdiction 9 ~ HHSM-500-2008-M0008Z
 Jurisdiction 10~HHSM-500-2009-M0004Z
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This Technical Direction Letter (TDL) is being issued to you as technical direction under your MAC contract and has been approved by your Contracting Officer's Technical Representative (COTR). This technical direction is not construed as a change or intent to change the scope of work under the contract and is to be acted upon only if sufficient funds are available. In this regard, your attention is directed to the clause of the General Provisions of your contract entitled Limitation of Funds, FAR 52.232-22 or Limitation of Cost, FAR 52.232-20 (as applicable). If the Contractor considers anything contained herein to be outside of the current scope of the contract, or contrary to any of its terms or conditions, the Contractor shall

immediately notify the Contracting Officer in writing as to the specific discrepancies and any proposed corrective action.

Should you require further technical clarification, you may contact your COTR. Contractual questions should be directed to your CMS Contracting Officer. Please copy the COTR and Contracting Officer on all electronic and/or written correspondence in relation to this technical direction letter.

If you are an FI or carrier and have any questions, please contact Michael Marquis at michael.marquis@cms.gov .

/s/
Janis Nero

/s/
Karen Jackson

cc:

Andrew Conn, National Heritage Insurance Company
 Dorothy W. Pines, National Heritage Insurance Company
 David Barnett, National Government Services, Inc
 Joel Allegier, National Government Services, Inc
 Melissa Kirchenbauer, CGS, LLC
 Robert Madgett, CGS, LLC
 Emy Stenerson, Noridian Administrative Services
 Paul O'Donnell, Noridian Administrative Services
 Karla Thormodson, Noridian Administrative Services
 Scott Manning, TrailBlazer Health Enterprises
 Rob Solomon, TrailBlazer Health Enterprises
 Kris Martin, Wisconsin Physicians Service Health Insurance Corporation
 Frances Dye, Wisconsin Physicians Service Health Insurance Corporation
 Mike Barlow, Palmetto GBA
 Larry Leslie, Palmetto GBA
 Neal Burkhead, Palmetto GBA
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Larry Young, CM/MCMG
Carol Messick, CM/MCMG