

CMS Manual System

Pub 100-05 Medicare Secondary Payer

Transmittal 30

Department of Health &
Human Services
Center for Medicare and
&
Medicaid Services
Date: MAY 20, 2005
Change Request 3869

SUBJECT: Process to Address Freedom of Information and Subpoena Requests

I. SUMMARY OF CHANGES: Clarification of Freedom of Information (FOIA) and Subpoena requests received in the Medicare Secondary Payer (MSP) units and the process to take in response.

NEW/REVISED MATERIAL :

EFFECTIVE DATE : June 20, 2005

IMPLEMENTATION DATE : June 20, 2005

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R = REVISED, N = NEW, D = DELETED – Only One Per Row.

R/N/D	Chapter / Section / SubSection / Title
R	7/20.4.1/Handling Freedom of Information (FOIA) and Subpoena Duces Tecum Received in the MSP Units

III. FUNDING:

No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2005 operating budgets.

IV. ATTACHMENTS:

Business Requirements

Manual Instruction

**Unless otherwise specified, the effective date is the date of service.*

Attachment - Business Requirements

Pub. 100-05	Transmittal: 30	Date: May 20, 2005	Change Request 3869
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SUBJECT: Process to Address Freedom of Information (FOIA) and Subpoena Requests in Medicare Secondary Payer (MSP) Units

I. GENERAL INFORMATION

A. Background: Contractors historically receive request for records under FOIA and Subpoenas. A consistent approach to responding to these requests is needed. Due to the nature of the FOIA request and/or Subpoena immediate action may be necessary, therefore a known point of contact at each contractor, FOIA Coordinator, must be utilized.

B. Policy: Pub. 100-01 Chapter 6 provides general policy involving FOIA and Subpoena requests. This CR will ensure Medicare Secondary Payer unit consistency with this policy.

II. BUSINESS REQUIREMENTS

“Shall” denotes a mandatory requirement

“Should” denotes an optional requirement

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R H I	C a r r i e r	D M E R C	Shared System Maintainers				Other
						F I S S	M C S	V M S	C W F	
3869.1	Contractors shall consider written record requests and legal records requests in the form of a non-Federal court Subpoena Duces Tecum from members of the public as FOIA and shall refer such requests to their internal FOIA coordinator with the exception of:	X	X	X	X					
3869.1.1	FOIA requests or Subpoena requests sent directly to the MSP units for which beneficiary records are requested and related to a MSP recovery case. A beneficiary release/authorization to provide information shall be attached to the request or already contained within the case file before supplying any information.	X	X	X	X					

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R H I	C a r r i e r	D M E R C	Shared System Maintainers				Other
F I S S	M C S					V M S	C W F			
3869.2	Upon receipt of a verbal FOIA or Subpoena request from a third party for beneficiary records, the Contractor shall inform the caller to make a request in writing and send to the contractors FOIA coordinator	X	X	X	X					
3869.3	The contractor shall treat all beneficiary specific FOIA request or Subpoena as a potential MSP lead situation and take appropriate actions to initiate possible recoveries.	X	X	X	X					

III. PROVIDER EDUCATION

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)								
		F I	R H I	C a r r i e r	D M E R C	Shared System Maintainers				Other
F I S S	M C S					V M S	C W F			
	None.									

IV. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

A. Other Instructions: N/A

X-Ref Requirement #	Instructions

B. Design Considerations: N/A

X-Ref Requirement #	Recommendation for Medicare System Requirements

C. Interfaces: N/A

D. Contractor Financial Reporting /Workload Impact: N/A

E. Dependencies: N/A

F. Testing Considerations: N/A

V. SCHEDULE, CONTACTS, AND FUNDING

Effective Date*: June 20, 2005	No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2005 operating budgets.
Implementation Date: June 20, 2005	
Post-Implementation Contact(s): Tina Merritt	

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20.4.1 – Handling Freedom of Information (FOIA) and Subpoena Duces Tecum Received in the MSP Units

(Rev. 30, Issued: 05-20-05, Effective: 06-20-05, Implementation: 06-20-05)

Written requests for records from members of the public are treated as FOIA requests. In addition, legal requests in the form of non-Federal Court Subpoena Duces Tecum (i.e., Subpoenas for records) also are treated as FOIA requests. The processing of such requests is usually handled by the contractor's internal FOIA coordinator/unit.

However, the following kinds of requests and non-Federal Court Subpoenas directly received in the MSP areas as a result of MSP recovery activity, shall be processed by the contractor's MSP staff: written requests and subpoena's from a beneficiary's attorney or other representative, both of which must submit a beneficiary's written and signed authorization to release records.

If a contractor receives any other kind of a subpoena or a written request for records, it shall immediately refer the request and all associated documentation to the contractor's internal FOIA Coordinator. The FOIA Coordinator shall make a determination as to how to handle the subpoena and/or the FOIA request.

When a contractor receives a verbal request for records from an individual or entity other than the beneficiary's representative, it shall advise the caller that his/her request must be made in writing and submitted to its internal FOIA Coordinator.

The MSP unit shall address all beneficiary specific FOIA requests and Subpoenas from a third party as a possible Medicare Secondary Payer (MSP) lead and take appropriate action (See Pub. 100-5 Chapter 5).

NOTE: Requests made to the MSP area from a beneficiary's attorney or other representative must be accompanied by a written and signed beneficiary authorization.