

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CENTER FOR BENEFICIARY CHOICES

TO: All Medicare Advantage Organizations, Cost Plan Contractors, PACE organizations, and Prescription Drug Plan Sponsors

FROM: David Lewis, Director, Medicare Advantage Group
Cynthia G. Tudor, Ph.D., Director, Medicare Drug Benefit Group

RE: Data Use Attestation

DATE: August 28, 2007

The Centers for Medicare & Medicaid Services (CMS) must ensure that organizations restrict their use of CMS data systems to those uses directly related to the operation of their Medicare managed care or prescription drug plan contracts. As a result, CMS is requesting that all organizations execute and return the attached attestation as part of their completion of the contracting process for 2008. This attestation is meant to document an already existing obligation on the part of organizations.

By completing this attestation, organizations are agreeing that, as a condition of having been granted permission to use and receive information from CMS databases (e.g., access to enrollment eligibility information to perform enrollment/disenrollment transactions), they will not use their access to that information to operate lines of business not directly related to the operation of their Part C, Part D, PACE, or Cost Plan contracts. Most significantly, organizations are not to use data obtained from CMS systems to develop, market, or operate lines of business unrelated to their Medicare plan operations.

CMS intends for this attestation to govern only the information an organization obtains solely as a result of the access to CMS systems granted to the organization because it is a Part C, Part D, PACE, or Cost Plan contractor. That is, if an organization has information it obtained directly from Medicare beneficiaries, for example, as well as from a file provided by CMS, this agreement would not apply. Examples of the kind of information organizations may have solely because of their access to CMS systems may include data concerning beneficiaries who are not members of the organization's Medicare plans, risk adjustment scores, or a beneficiary's previous Part D coverage status.

This attestation is not meant to restrict organizations' use of data to perform those activities that can be directly related to management of their Medicare plan operations. For example, organizations may use the data from CMS systems to develop and carry out

quality improvement projects or to conduct the analysis necessary to develop Medicare plan benefit packages.

This attestation does not govern information that organizations have collected from beneficiaries directly. Also, it does not apply to data the organization developed through its own operation of its Medicare benefit plans, including claims histories and utilization data.

The terms of the data use attestation do not replace any Part C or D rules governing marketing of non-Medicare covered products (e.g., value added items and services [VAIS]). Please see the [Medicare Marketing Guidelines](#) for information concerning the rules governing organizations' marketing of services not paid for by Medicare to beneficiaries.

Organizations should keep in mind that they are responsible for the conduct of any of the subcontractors to which they have granted access to CMS information systems to perform Medicare-related contract work on their behalf. Misuse of the data by a subcontractor in this instance may result in termination of the contracting organization's Medicare contract(s). For example, a PDP sponsor that grants a subcontractor access to the CMS enrollment and eligibility data base to perform Part D enrollment processing work risks losing its PDP sponsor contract if it is determined that the subcontractor has used information it obtained from the enrollment and eligibility data base to market life insurance policies.

Please refer to the 2008 contracting instructions for specific information on how to complete and return the data use attestation to CMS. Thank you in advance for completing this portion of the 2008 contracting process. If you have any questions about the policies governing the use of data from CMS systems, please contact Scott Nelson at Scott.Nelson2@cms.hhs.gov.