COMPUTER MATCHING AGREEMENT
BETWEEN
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERVICES
AND
THE DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION
FOR THE
VERIFICATION OF ELIGIBILITY FOR MINIMUM ESSENTAL COVERAGE UNDER
THE PATIENT PROTECTION AND AFFORDABLE CARE ACT THROUGH A VETERANS HEALTH ADMINISTRATION PLAN

Centers for Medicare & Medicaid Services No. 2018-06
Department of Health and Human Services No. 1807

Effective Date - October 2, 2018
Expiration Date - April 1, 2020

I. PURPOSE, LEGAL AUTHORITIES, AND DEFINITIONS

A. Purpose

The purpose of this Computer Matching Agreement (Agreement) is to establish the terms, conditions, safeguards, and procedures under which the Department Health and Human Services, Centers for Medicare & Medicaid Services (CMS) will disclose certain information to the Department of Veterans Affairs (VA), Veterans Health Administration (VHA). In accordance with the current regulations, CMS, in its capacity as operator of the Federally-facilitated Exchanges (FFE) and the Federal enrollment and eligibility platform, will use VHA's information to verify an Applicant's or Enrollee's enrollment in Minimum Essential Coverage (MEC) through a VHA Health Care Program for the purpose of making Eligibility Determinations, including Eligibility Determinations for which HHS is responsible under 45 Code of Federal Regulations (CFR) § 155.302.

The Privacy Act of 1974, as amended (in particular, by the Computer Matching and Privacy Protection Act of 1988 (CMPPA)(Public Law 100-503)), requires the Parties participating in a matching program to execute a written agreement specifying the terms and conditions under which the matching program will be conducted. CMS has determined that status verification checks to be conducted through the Hub by CMS and Administering Entities (AE) using the Enrollment System's Administrative Data Repository (ADR) and the Claims Processing & Eligibility Database (CP&E) constitute a "computer matching program" as defined in the CMPPA.

The responsible component for CMS is the Center for Consumer Information & Insurance Oversight (CCIIO). CMS will serve as the Recipient Agency. VHA will serve as the Source Agency, and as such, is the agency that discloses records contained in a system of

records (SOR) to be used in a matching program as defined by the Privacy Act (5 U.S.C. § 552a(a)(1 l)). The VHA component responsible for the disclosure of information is the VHA Privacy Office Manager, Information Access and Privacy Office. VHA acknowledges that AE, which include State-Based Exchanges (SBE) and Basic Health Programs (BHP), will use VHA data, accessed through the CMS Data Services Hub (Hub), to make Eligibility Determinations.

By entering into this Agreement, the Parties agree to comply with the terms and conditions set forth herein, as well as applicable law and regulations. The terms and conditions of this Agreement will be carried out by authorized employees and contractors of CMS and VHA. The terms and conditions under which state-based AE may receive and use VHA data will be set forth in a separate agreement between CMS and the state-based Administering Entities.

B. Legal Authorities

The following statutes and regulations govern or provide legal authority for the uses of data, including disclosures, under this Agreement:

1. This Agreement is executed pursuant to the Privacy Act of 1974 as amended (5 (U.S.C.) § 552a), and the regulations and guidance promulgated thereunder, including Office of Management and Budget (OMB) Circular A-108 "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" published at 81 Federal Register (Fed. Reg.) 94424 (Dec. 23, 2016) and OMB guidelines pertaining to computer matching published at 54 Fed. Reg. 25818 (June 19, 1989).

2. Under the authority of the Patient Protection and Affordable Care Act (Public Law (P. Law) No. 111-148), as amended by the Health Care and Education Reconciliation Act (P. Law No. 111-152) (collectively, the ACA) and the implementing regulations, certain individuals are eligible for certain financial assistance in paying for private insurance coverage under a Qualified Health Plan (QHP) when enrollment is through an Exchange. Such assistance includes Advanced Premium Tax Credits (APTC), under 26 U.S.C. § 36B, § 1412 of the ACA, and Cost-Sharing Reductions (CSR) under § 1402 of the ACA.

3. Section 36B(c)(2) of the Internal Revenue Code (IRC) of 1986, as added by §1401 of the ACA, provides that an individual is ineligible for APTC if that individual is eligible for other MEC as defined in 26 U.S.C. § 5000A(f), other than MEC described in 26 U.S.C. § 5000A(f)(l)(C), such as the coverage under VHA Health Care Programs. Section 1402(f)(2) of the ACA provides that an individual is ineligible for CSR if the individual is not also eligible for the premium tax credit for the relevant month.

4. Section 1331 of the ACA authorizes the BHP and § 1331(e)(I)(C) requires the states

administering BHP to verify whether an individual is eligible for other MEC as defined in 26 U.S.C. § 5000A(f), such as coverage under VHA Health Care Programs. (45 CFR § 155.320(d)).

5. Section 1411 of the ACA requires the Secretary of HHS to establish a program to determine eligibility for an individual to purchase a QHP through an Exchange and to determine eligibility for APTC and CSR. Under 45 CFR §§ 155.302 and 155.305, the eligibility determinations for APTC and CSR may be made by an Exchange or HHS. CMS carries out Exchange-related responsibilities of HHS. The system established by HHS under§ 1411 to determine eligibility for APTC and CSR, requires an Exchange to verify whether an individual is eligible for other MEC, such as coverage under a VHA Health Care Program, by sending information to HHS for HHS to provide the response.

6. Health Plans are only permitted to use or disclose protected health information (PHI), such as eligibility and enrollment information, as permitted or required by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. Among other things, the HIPAA Privacy Rule (45 CFR § 164.512(k)(6)(i)) permits a health plan that is a government program providing public benefits, such as a VHA Health Care Program, to disclose eligibility and enrollment information to an agency administering another government program providing public benefits if the disclosure is required or expressly authorized under regulation or statute. 45 CFR § 155.320(b)(2) expressly authorizes the disclosure to HHS of information regarding eligibility for and enrollment in a health plan, which may be considered PHI, for the purposes of verification of an applicant's eligibility for MEC as part of the eligibility determination process for APTC or CSR.

7. 26 U.S.C. § 6103(l)(21) authorizes the disclosure of certain tax return information as defined under 26 U.S.C. § 6103(b)(2) (hereinafter "Return Information") for purposes of determining eligibility for certain Insurance Affordability Programs and prohibits disclosure of Federal tax information to an Exchange or State agency administering a State program, unless the program is in compliance with the safeguards requirements of 26 U.S.C. § 6103(p)(4), and unless the information is used to establish eligibility for certain Insurance Affordability Programs.

C. Definitions

For the purposes of this Agreement:

1. "ACA" means Patient Protection and Affordable Care Act (Public Law No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152), codified at 42 U.S.C. 18001 (collectively, the ACA);

2. "Administering Entity" means an entity administering an Insurance Affordability Program;

3. "Agent" or "Broker" means a person or entity licensed by the State as an agent, broker or insurance producer;

4. "Advanced Premium Tax Credit" or "APTC" means payment of the tax credit specified in section 36B of the IRC of 1986 (as added by section 1401 of the ACA) that are provided on an advance basis on behalf of an eligible individual enrolled in a QHP through an Exchange in accordance with section 1412 of the ACA. APTC are not considered Federal Tax Information under 26 U.S.C. § 6103;

5. "Applicant" means an individual who is seeking eligibility for him or herself through an application submitted to an Exchange, excluding individuals seeking eligibility for an exemption from the individual shared responsibility payment pursuant to subpart G of Part 155 of title 45 of the Code of Federal Regulations, submitted to a BHP program, or transmitted to an Exchange by an agency administering an Insurance Affordability Program for at least one of the following (a) enrollment in a QHP through an Exchange; or (b) the BHP;

6. "Authorized Representative" means an individual, person or organization acting, in accordance with 45 CFR § 155.227, on behalf of an Applicant or Enrollee in applying for an Eligibility Determination, including a redetermination, and in carrying out other ongoing communications with the Exchange;

7. "Authorized User" means an information system user who is provided with access privileges to any data resulting from this match or to any data created as a result of this match. Authorized Users include Administering Entities;

8. "Benefit Year" means the calendar year for which a health plan purchased through an Exchange provides coverage for health benefits;

9. "Breach" is defined by OMB Memorandum OMB M-17-12 Preparing for and Responding a Breach of Personally Identifiable Information, (January 3, 2017) as the compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, loss of control, or any similar term or phrase that refers to situations where persons other than Authorized Users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic;

10. "Claims Processing & Eligibility Database" (CP&E) is a database managed by the VHA;

11. "CMS" means the Centers for Medicare & Medicaid Services;

12. "Cost-Sharing Reductions" or "CSR" are defined at 45 CFR § 155.20 and means reductions in cost sharing for an eligible individual enrolled in a silver level plan through an Exchange or for an individual who is an Indian enrolled in a QHP

through an Exchange, provided in accordance with section 1402 of the ACA. CSRs are not considered Federal Tax Information (FTI) under 26 U.S.C. § 6103;

13. "Eligibility Determination" means the determination of eligibility for Insurance Affordability programs, including a redetermination based on a self-reported change pursuant to 45 CFR § 155.330, and the process of appealing an eligibility determination when an appeal is provided pursuant to section 1411(f) of the ACA;

14. "Enrollee" means an individual enrolled in a QHP through an Exchange or enrolled in a BHP;

15. "Enrollment System's Administrative Data Repository" (ADR) is a database managed by VHA;

16. "Exchange" means an American Health Benefit Exchange established under §§ 1311(b), 1311(d)(l), or 1321(c)(l) of the ACA, including both state-based Exchanges and FFE;

17. "Federally-facilitated Exchange" or "FFE" means an Exchange established by HHS and operated by CMS under § 1321(c)(I) of the ACA;

18. "HHS" means the Department of Health and Human Services;

19. "Data Services Hub" or "Hub" is the CMS managed, single data exchange for Administering Entities to interface with Federal agency partners. Hub services allow for adherence to Federal and industry standards for security, data transport, and data safeguards as well as CMS policy for Administering Entities for eligibility determination and enrollment services;

20. "Insurance Affordability Programs" include (1) a program that makes coverage in a QHP through an Exchange with APTC; (2) a program that makes available coverage in a QHP through an Exchange with CSR; (3) the Medicaid program established under Title XIX of the Social Security Act (the Act); (4) Children's Health Insurance Program (CHIP) established under Title XXI of the Act; and (5) The Basic Health Program (BHP) established under §1331 of the ACA;

21. "Minimum Essential Coverage" or "MEC" is defined in IRC § 5000A(f) and includes health insurance coverage offered in the individual market within a state, which includes a QHP offered through an Exchange, an eligible employer-sponsored plan, or government-sponsored coverage such as coverage under Medicare Part A, TRICARE, or a VHA Health Care Program (as defined in Section I.C.31 below);

22. "Navigator" means a private or public entity or individual that is qualified, and licensed, if appropriate, to engage in the activities and meet the standards described in 45 CFR §155.210;

23. "Personally Identifiable Information" or "PII" is defined by OMB M-17-12 (January 3, 2017), and means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.;

24. "Qualified Health Plan" or "QHP" means a health plan that has in effect a certification that it meets the standards described in subpart C of part 156 of title 45 of the Code of Federal Regulations issued or recognized by each Exchange through which such plan is offered in accordance with the process described in subpart K of part 155 in title 45 of the CFR;

25. "Recipient Agency" is defined by the Privacy Act (5 U.S.C. § 552a(a)(9)) and means any agency, or contractor thereof, receiving records contained in a system of records from a Source Agency for use in a matching program;

26. "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

27. "Security Incident" means the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent;

28. "Source Agency," is defined by the Privacy Act (5 U.S.C. § 552a(a)(11)), means any agency that discloses records contained in a system of records to be used in a matching program;

29. "State-based Exchange" means an Exchange established and operated by a state, and approved by HHS under 45 CFR § 105;

30. "System of Records" or "SOR" is defined by the Privacy Act (5 U.S.C. § 552a(a)(5)), means a group of any records under the control of any agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

31. "VHA Health Care Program" means a health care program under chapter 17 or 18 of title 38 U.S.C., as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary of the Treasury department, as defined in regulations implementing 26 U.S.C. § 5000A.

II. RESPONSIBILITIES OF THE PARTIES

A. CMS Responsibilities

1. CMS will develop procedures through which an Applicant or Enrollee may request an Eligibility Determination via a single, streamlined application.

2. CMS may request verification from VHA of an Applicant's or Enrollee's enrollment status in a VHA Health Care Program; CMS and AE will only request data from VHA's records when necessary for CMS or the AE to make an Eligibility Determination.

3. CMS will provide to VHA the required data elements necessary and agreed upon by both Parties when requesting data from VHA through the Hub, including, but not limited to, first and last name, gender, date of birth and social security number (SSN).

4. CMS will receive the VHA response data elements through the Hub and will utilize the information provided by VHA in making Eligibility Determinations.

5. CMS has developed and will maintain procedures through which a state-based AE can request and receive information from VHA through the CMS Hub to make Eligibility Determinations.

6. CMS will enter into agreements with state-based AE that bind the state-based AE to comply with appropriate privacy and security standards and protections for PII, including requirements for these entities and their employees, contractors, and agents to comply with the use and disclosure limitations set forth in section 1411(g) of the ACA, privacy and security standards that are consistent with the principles outlined under 45 CFR § 155.260, and privacy and security standards that are consistent with the terms and conditions of this Agreement.

7. CMS will provide Congress and the OMB with advance notice of this matching program and, upon completion of their advance review period, will publish the required matching notice in the Federal Register.

B. VHA Responsibilities

1. VHA will develop and maintain procedures to respond to verification requests by CMS and state-based AE, and to transmit information from its relevant SOR of records to verify or validate attestations made by Applicants and Enrollees related to enrollment in VHA Health Care Programs.

2. VHA will perform probabilistic data matching logic activity to match the identity of the Applicant or Enrollee's inputs with VHA data records.

3. VHA will provide VHA data to the Hub, including SSN, MEC start dates and MEC end dates, if present, and transaction ID, in order to verify whether the Applicant or Enrollee was enrolled in VHA Health Care Program within the period requested by CMS or a state-based AE through the Hub.

4. VHA will provide a 'coded' response if the person was either not found within the VHA database or the person was not enrolled within VHA given the time period provided by CMS.

III. JUSTIFICATION AND ANTICIPATED RESULTS

A. Cost Benefit Analysis

As required by § 552a(u)(4) of the Privacy Act, a cost benefit analysis (CBA) is included as Attachment 1, covering this and seven other "Marketplace" matching programs which CMS conducts with other Federal agencies. The CBA demonstrates that monetary costs to operate the eight Marketplace matching programs exceed $30.5 million, but does not quantify direct governmental cost saving benefits sufficient to offset the costs since the Marketplace matching programs are not intended to avoid or recover improper payments. The CBA, therefore, does not demonstrate that the matching program is likely to be cost-effective.

B. Other Supporting Justifications

Although the cost benefit analysis does not demonstrate that this matching program is likely to be cost effective, the program is justified for other reasons, as explained in this section. The DIB therefore is requested to make a determination, in writing, that the cost benefit analysis is not required, in accordance with 5 U.S.C. § 552a(u)(4)(B), and to approve the agreement based on other factors.

a. Certain Marketplace matching programs are required and are not discretionary. However, some Marketplace matching programs are based on VHA's permissive routine use disclosure authority, not a statutory obligation.

b. The Marketplace matching programs' eligibility determinations and MEC checks result in improved accuracy of consumer eligibility, which CMS anticipates will continue to produce expedited Eligibility Determinations while minimizing administrative burdens and achieve operational efficiencies.

c. The matching programs provide a significant net benefit to the public by accurately determining eligibility for the APTC.

d. An efficient eligibility and enrollment process contributes to greater numbers of consumers enrolling in Marketplace qualified health plans, resulting in a reduction of the uninsured population, therefore improving overall health care delivery.

e. Continuing to use the current matching program structure, which is less costly than any alternative structure, is expected to increase the public's trust in the participating agencies as stewards of taxpayer dollars.

C. Specific Estimate of Any Savings

There is no cost savings to conducting the Marketplace matching programs, as opposed to not conducting them. By requiring a single, streamlined application process, the ACA effectively required use of computer matching to make eligibility determinations. Therefore, the optimal result is attained by limiting the cost by using a matching program operational structure and technological process that is more efficient than any alternatives.

CMS estimates that the cost of operating this computer match was about $30.5 million ($30,563,340) per year. CMS' analysis suggests that the benefits of increased enrollment outweigh the costs given the increase in private insurance coverage through the ACA.

The Act does not require the showing of a favorable ratio for the match to be continued, only that an analysis be done unless statutorily exempted or waived by the DIB. The intention is to provide Congress with information to help evaluate the cost effectiveness of statutory matching requirements with a view to revising or eliminating them where appropriate.

IV. RECORDS DESCRIPTION

The Privacy Act requires that each CMA for protected data specify a description of the records which will be matched and exchanged, including a sample of data elements that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the program.

A. Systems of Records.

1. The CMS SOR that supports this matching program is the "CMS Health Insurance Exchanges System (HIX)", CMS System No. 09-70-0560, last published in full at 78 Fed. Reg. 63211 (October 23, 2013), as amended at 83 Fed. Reg. 6591 (February 14, 2018).

2. VHA maintains the following SORNs which include the below-identified routine uses supporting VHA's disclosures to CMS:

   a. 147VA16 Enrollment and Eligibility Records (VA) Routine Use No. 14; published at 74 Fed. Reg. 44901, August 31, 2009; and

   b. Routine Use #25 in 54VAI 6 Health Administration Center Civilian Health Medical Record - VA (CHAMPVA), and Spina Bifida Healthcare Program published at 74 Federal Register 34398, July 15, 2009.

B. Number of Records Involved

The Congressional Budget Office (CBO) estimated that up to 12 million records may be transacted for coverage in QHP and other Insurance Affordability Programs in calendar year 2018.

C. Specified Data Elements Used in the Match

1. From CMS to VHA. For each Applicant or Enrollee seeking an Eligibility Determination from an AE, and for whom VHA has the authority to release information, the AE will submit a request through the Hub to VHA that may contain, but is not limited to, the following specified data elements in a fixed record format:

   a. First Name (required)
   b. Middle Name/Initial (if provided by applicant)
   c. Surname (Applicant's Last Name) (required)
   d. Date of Birth (required)
   e. Gender (optional)
   f. SSN (required)
   g. Requested QHP Coverage Effective Date (required)
   h. Requested QHP Coverage End Date (required)
   i. Transaction ID (required)

2. From VHA to CMS. For each Applicant or Enrollee seeking an Eligibility Determination from an AE from whom CMS or an AE has secured consent and VHA has the authority to disclose information, VHA will provide a response to the Hub. The response will be in a standard fixed record format and may contain, but is not limited to, the following specified data elements:

   a. SSN (required)
   b. Start/End Date (s) of enrollment period (s) (when match occurs)
   c. A blank date response when a non-match occurs
   d. If CMS transmits request and a match is made, but VA's record contains a Date of Death, VA will respond in the same manner as a non-match response, with a blank date
   e. Enrollment period(s) is/are defined as the timeframe during which the person was enrolled in a VHA Health Care Program

D. Projected Starting and Completion Dates of the Matching Program

Effective Date – October 2, 2018
Expiration Date – April 1, 2020 (April 1, 2021 if renewed 1 year.)

V. NOTICE PROCEDURES

The matching notice which CMS will publish in the Federal Register as required by the Privacy Act (5 U.S.C. § 552a (e)(12)) will provide constructive notice of the matching program to affected individuals.

At the time of application or change of circumstances, CMS, or a State-based agency administering an Insurance Affordability Program, will provide a notice to Applicants for enrollment in a QHP or an Insurance Affordability Programs under ACA on the streamlined eligibility application. The agency administering the Insurance Affordability Program, including CMS in its capacity as an FFE, will ensure provision of a Redetermination or Renewal notice in accordance with applicable law. These notices will inform Applicants that the information they provide may be verified with information in the records of other Federal agencies.

An AE will ensure provision of a redetermination notice in accordance with applicable law. These notices will inform Applicants and Enrollees that the information they provide may be verified with information in the records of other Federal agencies.

VI. VERIFICATION PROCEDURES AND OPPORTUNITY TO CONTEST FINDINGS

The Privacy Act requires that each matching agreement specify procedures for verifying information produced in the matching program and an opportunity to contest findings, as required by 5 U.S.C. § 552a(p).

A. Verification and Opportunity to Contest Procedures.

Before an AE may take any adverse action based on the information received from the match, the individual will be permitted to provide the necessary information or documentation to verify eligibility information. When an AE determines that an individual is ineligible for an Insurance Affordability program based on the information provided by the match, and that information is inconsistent with information provided on the streamlined eligibility application or otherwise by an Applicant or Enrollee, the AE will comply with applicable law and will notify each Applicant, or Enrollee of the match findings and provide the following information: (1)The AE received information that indicates the individual is ineligible for an Insurance Affordability Program; and (2) the Applicant, or Enrollee has a specified number of days from the date of the notice to contest the determination that the Applicant or Enrollee is not eligible for the relevant Insurance Affordability Programs.

B. Contesting Findings:

In the event that information attested to by an individual for matching purposes is inconsistent with information received through electronic verifications obtained by the VHA through the Hub, the VHA must provide notice to the individual that the information they provided did not match information received through electronic verifications as follows:

1. If the AE is an Exchange, an individual seeking to resolve inconsistencies between attestations and the results of electronic verification for the purposes of completing an Eligibility Determination should be provided the opportunity to follow the procedures outlined in 45 CFR § 155.315(f). The AE will provide the proper contact information and instructions to the individual resolving the inconsistency.

2. If the AE is an agency administering a Medicaid or CHIP program, an individual seeking to resolve inconsistencies between attestations and the results of electronic for the purposes of completing an Eligibility Determination should be provided the opportunity to follow the procedures outlined in 42 CFR §§ 435.952, 435.956 and 457.380. The AE will provide the proper contact information and instructions to the individual resolving the inconsistency.

3. Per 42 CFR § 600.345, if the AE is a BHP, it must elect either Exchange verification procedures at 45 CFR §§ 155.315 and 155.320, or Medicaid verification procedures at 45 CFR § 435.945-956; and will resolve inconsistencies as set forth in paragraphs VI.B.1. And 2 above.

VII. DISPOSITION OF MATCHED ITEMS

VHA and CMS will retain the electronic files received from the other Party only for the period of time required for any processing related to the matching program and will then destroy all such data by electronic purging, unless VHA or CMS are required to retain the information for enrollment, billing, payment, program audit purposes, or legal evidentiary purposes or where they are required by law to retain the information. The CMS FFE and AE will retain data for such purposes and under the same terms. In case of such retention, VHA and CMS will retire the retained data in their SOR in accordance with the applicable Federal Records Retention Schedule (44 U.S.C. § 3303a). VHA and CMS will not create permanent files or separate system comprised solely of the data provided by the other agency.

VIII. SECURITY PROCEDURES

A. General. CMS and VHA will maintain a level of security that is commensurate with the risk and magnitude of harm that could result from the loss, misuse, disclosure, or modification of the information contained on the system with the highest appropriate sensitivity level.

B. Legal Compliance. CMS and VHA shall comply with the limitations on use, disclosure, storage, transport, and safeguarding of data under all applicable Federal laws and regulations. These laws and regulations include § 1411(g) of the ACA, the Privacy Act of 1974; the E-Government Act of 2002, which includes the Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. §§ 3541-3549, as amended by the Federal Information Security Modernization Act, 44 U.S.C. §§ 3551-3558; HIPAA; the Computer Fraud and Abuse Act of 1986; the Clinger-Cohen Act of 1996; and the corresponding implementation regulations for each statute. Additionally, CMS will

follow Federal, HHS, and CMS policies including the HHS Information Systems Security and Privacy Policy, as amended, and the CMS Information Security Acceptable Risk Safeguards (ARS) and CMS Minimum Security Requirements.

C. CMS and VHA will comply with OMB circulars and memoranda, such as OMB Circular A-130, Managing Information as a Strategic Resource, published at 81 Fed. Reg. 49,689 (July 28, 2016); and National Institute of Standards and Technology (NIST) directives and publications; and the Federal Acquisition Regulations. These laws, directives, and regulations include requirements for safeguarding Federal information systems and PIT used in Federal agency business processes, as well as related reporting requirements. The Parties recognize and will implement the laws, regulations, NIST standards, and OMB directives including those published subsequent to the effective date of this Agreement.

D. FISMA requirements apply to all Federal contractors, organizations, or entities that possess or use Federal information, or that operate, use, or have access to Federal information systems on behalf of an agency. Both Parties are responsible for oversight and compliance of their contractors and agents.

E. Loss, Potential Loss, Incident Reporting, and Breach Notification. CMS and VHA will comply with OMB reporting guidelines in the event of a loss, potential loss, Security Incident, or Breach of PII (see OMB M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information (Jan. 3, 2017); and OMB M-18-02, Fiscal Year 2017-2018 "Guidance on Federal Information Security and Privacy Management Requirements Guidance on Improving Federal Information Security and Privacy Management Practices" (Oct. 16, 2017)). The Party experiencing the incident will notify the other agency's System Security Contact named in this Agreement within one (1) hour of discovering the loss, potential loss, Security Incident, or Breach. If the Party experiencing the loss, potential loss, Security Incident, or Breach is unable to speak with the other Party's System Security Contact within one (1) hour or if for some reason contacting the System Security Contact is not practicable (e.g., outside of normal business hours), then the following contact information will be used:

1. VA Network and Security Operations Center (NSOC) 1-800-877-4328; VHA IT Service Desk: 303-398-7123; or
2. E-mail: HACTSTCustomerSupport@va.gov
3. CMS IT Service Desk: 1-800-562-1963
4. E-mail: CMS IT Service Desk@cms.hhs.gov

F. The Party that experienced the loss, potential loss, Security Incident, or Breach will be responsible for following its established procedures, including notifying the proper organizations (e.g., United States Computer Emergency Readiness Team (US-CERT)), conducting a breach and risk analysis, and making a determination of the need for notice and/or remediation to individuals affected by the loss. Parties under this agreement will follow PIT breach notification policies and related procedures as required by OMB guidelines and the US-CERT Federal Incident Notification Guidelines. If the

party experiencing the breach determines that the risk of harm requires notification to the affected individuals or other remedies, then that party will carry out these remedies without cost to the other party.

G. Administrative Safeguards. CMS and VHA will restrict access to the matched data and to any data created by the match to only those Authorized Users of the Hub, e.g. Administering Entities and their employees, agents, officials, contractors, etc., who need it to perform their official duties in connection with the uses of data authorized in this Agreement. Further, CMS and VHA will advise all personnel who will have access to the data matched and to any data created by the match of the confidential nature of the data, the safeguards required to protect the data, and the civil and criminal sanctions for noncompliance contained in the applicable Federal laws.

H. Physical Safeguards. CMS and VHA will store the data matched and any data created by the match in an area that is physically and technologically secure from access by unauthorized persons at all times. Physical safeguards may include door locks, card keys, biometric identifiers, etc. Only authorized personnel will transport the data matched and any data created by the match. CMS and VHA will establish appropriate safeguards for such data, as determined by a risk-based assessment of the circumstances involved.

I. Technical Safeguards. CMS and VHA will process the data matched and any data created by the match under the immediate supervision and control of authorized personnel to protect the confidentiality of the data in such a way that unauthorized persons cannot retrieve any such data by means of computer, remote terminal, or other means. Systems personnel must enter personal identification numbers when accessing data on a party's systems. VHA and CMS will strictly limit authorization to those electronic data areas necessary for the authorized analyst to perform his or her official duties.

J. Application of Policies and Procedures. The Parties will adopt policies and procedures to ensure that each Party uses the information described in this Agreement that is contained in their respective records or obtained from each other solely as provided in this Agreement. CMS and VHA will comply with their respective policies and procedures and any subsequent revisions.

K. On-Site Inspections. Each Party has the right to monitor the other Party's compliance with FISMA requirements for data exchanged under this Agreement, and to audit compliance with this Agreement, if necessary, during the lifetime of this Agreement, or any extension of this Agreement. Each Party will provide the other Party with any reports and/or documentation relating to such inspections at the other party's request. Each Party may request an on-site inspection in addition to requesting reports and/or documentation.

L. Compliance. CMS must ensure information systems and data exchanged under this

matching agreement are maintained compliant with CMS guidance Minimum Acceptable Risk Standards for Exchanges - (MARS-E) Exchange Reference Architecture Supplement. The MARS-E suite of documents can be found at: http://www.cms.gov/cciio/resources/regulations-and-guidance/index.html, under Minimum Acceptable Risk Standards. To the extent, these documents are revised during the term of this Agreement, CMS must ensure compliance with the revised version.

IX. RECORDS USAGE, DUPLICATION AND RE-DISCLOSURE RESTRICTIONS

CMS and VHA will comply with the following limitations on use, duplication, and disclosure of the electronic files and data provided by the other Party under this Agreement:

A. CMS and VHA will only use the data for purposes specified by this Agreement or allowed by applicable SORN or Federal law.

B. CMS and VHA must seek the consent of the other Party to use or disclose the data for any purpose other than the purposes described in this agreement. VHA and CMS will not give such consent, unless the law permits disclosure, or the disclosure is essential to the matching program. For such permission, the agency requesting permission must specify the following in writing; (1) what data will be used or disclosed, (2) to whom will the data be disclosed, (3) the reasons justifying such use or disclosure, and (4) the intended use of the data.

C. The matching data provided by VHA under this Agreement will remain the property of VHA and will be retained by CMS and AE to be used for audits to verify the accuracy of matches and to adjudicate appeals.

D. CMS will restrict access to data solely to officers, employees, and contractors of CMS and state-based AE. Through the Hub, CMS may disclose the data received under this Agreement to AE pursuant to separate CMA that authorize such entities to use the data for Eligibility Determinations regarding APTC, CSR, and BHP.

E. CMS and AE will restrict access to the results of the data match to Applicants or Enrollees, application filers, and Authorized Representatives of such persons and to Certified Application Counselors, Navigators, Agents, and Brokers who have been authorized by the Applicant and are obligated by regulation and/or under agreement with CMS or an Administering Entity. CMS and AE shall require the same or more stringent privacy and security standards as a condition of contract or agreement with individuals or entities, such as Navigators, Agents, or Brokers that (I) gain access from CMS or an AE to PII submitted to an Exchange or (2) collect, use, or disclose PII gathered directly from Applicants or Enrollees while that individual or entity is performing the functions outlined in the agreement with the

Exchange. (See 45 CFR §155.260; 42 CFR § 431, subpart F, including §§ 431.301, 431.302, 431.303, 431.305; 42 CFR § 435.945; and 42 CFR § 457.1110.)

X. RECORDS ACCURACY ASSESSMENTS

VHA currently estimates that 99% of the information within the ADR is accurate for ACA purposes in cases where (1) an exact applicant match is returned, (2) the applicant has an enrollment status of "verified", and (3) their enrollment period coincides with the start/end dates received from the Hub.

XI. COMPTROLLER GENERAL ACCESS

Pursuant to 5 U.S.C. § 552a(o)(l)(K), the Government Accountability Office (Comptroller General) may have access to all CMS and VHA records, as necessary, in order to verify compliance with this Agreement.

XII. REIMBURSEMENT

All work performed by VHA to perform the computer matches in accordance with this Agreement will be performed on a reimbursable basis. The legal authority for the transfer of funds between CMS and VHA is the Economy Act, 31 U.S.C. § 1535. Reimbursement will be transacted by means of a separate reimbursement instrument in accordance with the established procedures that apply to funding reimbursement actions. CMS and VHA will execute and maintain a separate Interagency Agreement on an annual basis to address CMS reimbursement of relevant VHA costs related to systems access covered by this Agreement. CMS agrees not to process requests directly received from any non-profit entity that VHA does not have the legal authority to bill.

XIII. DURATION OF AGREEMENT

A. Effective Date: The Effective Date of this Agreement is October 2, 2018, provided that CMS reported the proposal to re-establish this matching agreement to the Congressional committees of jurisdiction and OMB in accordance with 5 U.S.C. § 552a(o)(2)(A) and (r) and OMB Circular A-108 and, upon completion of their advance review period, CMS published notice of the matching program in the Federal Register for a minimum of thirty days as required by 5 U.S.C. 552a(e)(12).

B. The AE and CMS may, within three (3) months prior to the expiration of this Agreement, renew this Agreement for a period not to exceed twelve (12) months if CMS and VHA certify the following to the HHS DIB:

   1. The matching program will be conducted without change; and
   2. The parties have conducted the matching program in compliance with this agreement.

C. Modification: The Parties may modify this Agreement at any time by a written modification, mutually agreed to by both Parties. The proposed modified Agreement must be reviewed by HHS DIB counsel in OGC to determine if the change is significant and

requires a new agreement.

D. Termination: This Agreement may be terminated at any time upon the mutual written consent of the Parties. Either party may unilaterally terminate this agreement upon written notice to the other party, in which case the termination date shall be effective ninety (90) days after the date of the notice or at a later date specified in the notice provided this date does not exceed the approved duration for the agreement. A copy of this notification should be submitted to the Secretary, HHS DIB.

XIV. PERSONS TO CONTACT

A. The VHA contacts are:

Project Coordinator

Upneet Randhawa
Director, Veterans Point of Service Systems Management
Chief Business Office
U.S. Department of Veterans Affairs
300 Ocean Gate
Long Beach, California 90802
Telephone: 562-826-5963
Mobile: 562-340-1933
E-mail: Upneet.randhawa@va.gov.

Privacy Issues

Andrea Wilson, RHIA, MAM, CIPP-US
VHA Privacy Office Manager
Information Access and Privacy Office
Office of Health Informatics (OHI) 10A7B
810 Vermont Avenue
Washington, D.C. 20420
Telephone: 321-205-4305
E-mail: Andrea.Wilson3@va.gov.

Systems and Security Issues

Adrienne Ficchi, MBA, CHPSE, VHA-CM
Director, Health Care Security Requirements
Health Information Governance (HIG)
VHA, Office of Health Informatics (OHI) (10A7)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Telephone: 215-823-5826
E-mail: Adrienne.Ficchi@va.gov.

B. The CMS contacts are:

Program Issues

Elizabeth Kane, Acting Director, Verifications Policy & Operations Branch
Eligibility and Enrollment Policy and Operations Group
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
7501 Wisconsin Avenue
Bethesda, MD 20814
Telephone: (301) 492-4418
E-mail: Elizabeth.Kane@cms.hhs.gov

Medicaid/CHIP Issues

Julie Boughn Director
Data and Systems Group
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Mail Stop: S2-22-27 Location: S2-23-06
Baltimore, MD 21244-1850
Telephone: (410) 786-9361
E-mail: julie.boughn1@cms.hhs.gov

Privacy and Agreement Issues

Walter Stone, CMS Privacy Act Officer
Division of Security, Privacy Policy & Governance
Information Security & Privacy Group
Office of Information Technology
Centers for Medicare & Medicaid Services
Location: N1-14-56
7500 Security Boulevard
Baltimore, MD 21244-1850
Telephone: (410) 7 86-5357
E-mail: walter.stone@cms.hhs.gov.

Barbara Demopulos, Privacy Advisor
Division of Security, Privacy Policy & Governance
Information Security & Privacy Group
Office of Information Technology
Centers for Medicare & Medicaid Services
Location: N1-14-40
7500 Security Boulevard
Baltimore, MD 21244-1850
Telephone: (410) 786-6340

E-mail: Barbara.demopulos@cms.hhs.gov

XV. LIABILITY

A. Each Party to this Agreement shall be liable for acts and omissions of its own employees.

B. Neither Party shall be liable for any injury to another Party's personnel or damage to another Party's property, unless such injury or damage is compensable under the Federal Tort Claims Act (28 U.S.C. § 1346(b)), or pursuant to other Federal statutory authority.

C. Neither Party shall be responsible for any financial loss incurred by the other, whether directly or indirectly, through the use of any data furnished pursuant to this Agreement.

XVI. INTEGRATION CLAUSE

This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all other computer matching agreements between the Parties that pertain to the disclosure of data between VHA and CMS for the purposes described in this Agreement. CMS and VHA have made no representations, warranties, or promises outside of this Agreement. This Agreement takes precedence over any other documents that may be in conflict with it.

XVII. APPROVALS

A. Centers for Medicare & Medicaid Services Program Official

The authorized program official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits his or her respective organization to the terms of this Agreement.

Approved by (Signature of Authorized CMS Approving Official) Jeffrey Grant Digitally signed by Jeffrey Grant –S Date: 2018.05.29 23:05:16 -04'00'	
Jeffrey Grant **Deputy Director for Operations** **Center for Consumer Information & Insurance Oversight** **Centers for Medicare & Medicaid Services**	Date:

B. Centers for Medicare & Medicaid Services Approving Official

The authorized program official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirm that no verbal agreements of any kind shall be binding or recognized, and hereby commits their respective organization to the terms of this Agreement.

Approved by (Signature of Authorized CMS Program Official)	
Timothy Hill **Deputy Director** **Centers for Medicaid and CHIP Services** **Centers for Medicare & Medicaid Services**	**Date:** 5/29/18

C. Centers for Medicare & Medicaid Services Approving Official

The authorized approving official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits his respective organization to the terms of this Agreement.

Approved by (Signature of Authorized CMS Approving Official)	
Emery Csulak	
Emery J. Csulak, Director **Information Security and Privacy Group, and** **Senior Official for Privacy** **Centers for Medicare & Medicaid Services**	Date: 9/25/18

D. Data Integrity Board: Department of Health and Human Services

The authorized Data Integrity Board official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirm that no verbal agreements of any kind shall be binding or recognized, and hereby commits their respective organization to the terms of this Agreement.

<table>
<tr><td colspan="2">Approved by (Signature of Authorized HHS DIB Official)
Scott W Rowell</td></tr>
<tr><td>Scott W. Rowell
Assistant Secretary for Administration, and
Chairperson, HHS Data Integrity Board
U.S. Department of Health and Human Services</td><td>Date:
9/14/18</td></tr>
</table>

E. VHA Approving Official

The authorized approving official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirm that no verbal agreements of any kind shall be binding or recognized, and hereby commits their respective organization to the terms of this Agreement.

Approved By (Signature of Authorized VHA Approving Official) UPNEET K. RANDHAWA 249099 Digitally signed by UPNEET K. RANDHAWA 249099 Date: 2018.08.01 11:56:47 -07'00'	
Upneet Randhawa, Director **Veterans Point of Service Systems Management** **Chief Business Office, Member Services** **Veterans Health Administration** **Department of Veterans Affairs**	Date:

F. Approving Official: VA

The authorized VHA official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirm that no verbal agreements of any kind shall be binding or recognized, and hereby commits their respective organization to the terms of this Agreement.

Approved By (Signature of Authorized VA Official)	
Alan R. Constantian **Deputy CIO, Account Manager for** **Health Department of Veterans**	**Date:**

G. Data Integrity Board: Department of Veterans Affairs

The authorized Data Integrity Board official. whose signature appears below. accepts and expressly agrees to the terms and conditions expressed herein. confirm that no verbal agreements of any kind shall be binding or recognized. and hereby commits their respective organization to the terms of this Agreement.

Approved by (Signature of Authorized VA DIB Official) LaShaunne G. david 567193 Digitally signed by LaShaunne G. david 567193 Date: 2018.08.01 14:36:51 -04'00'	
Camilo J. Sandoval **Chairman, Data Integrity Board** **U.S. Department of Veterans Affairs**	Date:

Attachment 1: Cost-Benefit Analysis: