# 51 FR 41352 (FINAL RULE) SORN 09-35-0002 (formerly numbered 09-37-0019)

## FEDERAL REGISTER

45 CFR Part 5b  
  
Privacy Act of 1974; Exempt System

November 14, 1986

AGENCY: Office of the Secretary, HHS

ACTION: Final rule.  
  
SUMMARY: The Department of Health and Human Services hereby exempts a new system of records, 09-37-0019, "National Medical Expenditure Survey (NMES) Records," to be maintained by National Center for Health Services Research and Health Care Technology Assessment (NCHSR), from the subject access and amendment requirements of the Privacy Act to maintain the statistical nature of these documents.  
  
EFFECTIVE DATE: November 14, 1986.  
  
FOR FURTHER INFORMATION CONTACT: Daniel C. Walden, Ph.D., Senior Research Manager, Division of Intramural Research, NCHSR, (301) 443-4836.

SUPPLEMENTARY INFORMATION: The National Medical Expenditure Survey (NMES) succeeds a series of national medical expenditure surveys, most notably the 1977 National Medical Care Expenditure Survey (NMCES) and the 1980 National Medical Care Utilization and Expenditures Survey (NMCUES). The new survey will collect information on health status, use of health care services, expenditures and sources of payment, insurance coverage, employment, and demographic information for a sample of civilian noninstitutionalized as well as institutionalized populations. The date from this survey will be used solely for statistical purposes and for health policy research and analysis. No use will be made of the data which will affect the subject individuals or any of their rights, benefits or privileges.  
  
The survey is being conducted under section 304 of the Public Health Service (PHS) Act, [42 U.S.C. 242b,](http://www.lexis.com/research/buttonTFLink?_m=d829a3d1af7601949085dfbfa0349ad2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b51%20FR%2041352%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=1&_butInline=1&_butinfo=42%20USC%20242B&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAb&_md5=3db2839d65ccf85a7b7ae9182324f074) which authorizes the Secretary, acting through the National Center for Health Services Research and Health Care Technology Assessment (NCHSR), to conduct and support research demonstrations, evaluations, and statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States. The data collected by NCHSR are governed by [42 U.S.C. 242m](http://www.lexis.com/research/buttonTFLink?_m=d829a3d1af7601949085dfbfa0349ad2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b51%20FR%2041352%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=2&_butInline=1&_butinfo=42%20USC%20242M&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAb&_md5=a79a242062c7488c651bc8125ce1aca6)(d), section 308(d) of the PHS Act. Under this confidentiality provision, information collected which can be identified with an individual may not be used for any purpose other than the purpose for which it is collected, i.e., statistical and health policy research. Further, no information may be released from health statistical data which might identify individuals or institutions unless the individuals or institution or authorized representative has given specific consent for such release.  
  
Records on identifiable households, health care providers, employers, residents, and next of kin of such residents, of nursing and personal care homes, psychiatric hospitals, facilities for the mentally retarded, will be collected for NMES. Names, addresses and telephone numbers of individuals who respond on behalf of health care facilities and insurers will also be collected. Together, these records will constitute a "system of records" as that term is defined by the Privacy Act. Records will be retrieved by identifier as necessary to corroborate, complete or correct responses.  
  
Initially, the records were to be included under the broad National Center for Health Statistics (NCHS) systems of records 09-37-0010 and 09-37-0013, both of which contain prior medical expenditure survey data from the National Medical Care Expenditure Survey (NMCES) and the National Medical Care Utilization and Expenditure Survey (NMCUES). All data in these two systems are exempt from subject access and amendment requirements. However, the PHS has established a separate system of records for new NMES records (09-37-0019) which are to be administered by NCHSR and has published a notice in the Federal Register to this effect, [51 FR 2762,](http://www.lexis.com/research/buttonTFLink?_m=d829a3d1af7601949085dfbfa0349ad2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b51%20FR%2041352%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=3&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b51%20FR%202762%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAb&_md5=be181f3391bd358f6e7ec8f895826d5c) January 21, 1986.

In a notice of proposed rulemaking published in the Federal Register, [51 FR 16074,](http://www.lexis.com/research/buttonTFLink?_m=d829a3d1af7601949085dfbfa0349ad2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b51%20FR%2041352%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=4&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b51%20FR%2016074%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAb&_md5=c200a5c99103fa62813fd70434b378b7) April 30, 1986, it was proposed, in accordance with paragraph (k)(4) of the Privacy Act, that the new NMES material compiled by NCHSR and its contractor(s) being maintained solely for health statistical research purposes, like the original NMCES and NMCUES data, be exempted from paragraphs (c)(3), (d), (e)(4) (G) and (H), and(f) of the Privacy Act which essentially pertain to subject access and amendment rights.  
  
No comments were received. Thus, as previously proposed, the NMES system (09-37-0019) is exempted from paragraphs (c)(3), (d), (e)(4) (G) and (H), and (f) by the following amendment.  
  
The Department has determined that the authorized exemption of this system of records from the above-cited subject access and amendment requirements of the Privacy Act is not a major rule within the meaning of Executive Order 12291, nor will it have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Finally, the exemption as previously proposed by the following amendment does not impose any new information collection requirements within the Paperwork Reduction Act.  
  
  
List of Subjects in 45 CFR Part 5b  
  
Privacy.  
  
Accordingly, the Department of Health and Human Services amends 45 CFR Part 5b as set forth below.  
  
Dated: September 22, 1986.  
  
ROBERT E. WINDOM,  
*Assistant Secretary for Health*.  
  
Approved: October 17, 1986.

OTIS R. BOWEN,  
*Secretary, Department of Health and Human Services*.  
  
PART 5b -- PRIVACY ACT REGULATION  
  
1. The authority citation for Part 5b continues to read as follows:  
  
Authority: [5 U.S.C. 301,](http://www.lexis.com/research/buttonTFLink?_m=d829a3d1af7601949085dfbfa0349ad2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b51%20FR%2041352%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=5&_butInline=1&_butinfo=5%20USC%20301&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAb&_md5=67c0caaa7cd7546361e8a54b8972df29) [5 U.S.C. 552a.](http://www.lexis.com/research/buttonTFLink?_m=d829a3d1af7601949085dfbfa0349ad2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b51%20FR%2041352%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=6&_butInline=1&_butinfo=5%20USC%20552A&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAb&_md5=cdbd3bc133cec6482bd85fbf45648cd0)  
  
2. Section 5b.11 is amended by adding paragraph (b)(2)(iii)(F) as follows:  
  
§ 5b.11 Exempt systems.  
  
  
\* \* \* \* \*  
  
(b) \* \* \*  
  
(2) \* \* \*  
  
(iii) \* \* \*  
  
(F) National Medical Expenditure Survey Records. HHS/OASH/NCHSR

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[FR Doc. 86-25765 Filed 11-13-86; 8:45 am]  
  
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