Supporting Statement for the
Important Message from Medicare
Contained in 42 CFR §405.1205 and §422.620

INTRODUCTION

This application requests revision of an existing collection, 0938-0692, the Important Message from Medicare (IM), in association with final rule CMS-4105-F, [Medicare Program; Notification of Hospital Discharge Appeal Rights]. The final rule sets forth requirements for how hospitals must notify Medicare beneficiaries who are hospital inpatients about their hospital discharge rights. Notice is required both for original Medicare beneficiaries and for beneficiaries enrolled in Medicare Advantage (MA) plans and other Medicare health plans subject to the MA regulations.

A. Background

In recent years, we have published several rules regarding hospital discharge notice policy, as well as rules regarding required notices in other provider settings when Medicare services are terminated. (See our April 5, 2006 proposed rule in the Federal Register (71 FR 17053) for a description of these rules.) Currently, at or about the time of admission, hospitals must deliver the "Important Message from Medicare" (IM), as required by Section 1866(a)(1)(M) of the Social Security Act (the Act), to all hospital inpatients with Medicare to explain their rights as a hospital in-patient, including their appeal rights at discharge. In addition, a hospital must provide a Hospital-Issued Notice of Non-coverage (HINN) to any beneficiary in original Medicare that expresses dissatisfaction with an impending hospital discharge. Similarly, MA organizations are required to provide enrollees with a notice of non-coverage, known as the Notice of Discharge and Medicare Appeal Rights (NODMAR), when a beneficiary disagrees with a discharge decision (or when the individual is not being discharged, but the organization no longer intends to cover the inpatient stay).

The Weichardt v. Leavitt class action lawsuit filed in 2003 contested the legitimacy of the current hospital notice procedures. A settlement agreement was signed on October 28, 2005 whereby CMS agreed to publication of a proposed rule, CMS-4105-P and associated proposed notices (CMS 10066) setting forth revised discharge notice requirements for hospital inpatients who have Medicare. In that rule, we proposed to require hospitals to deliver, prior to discharge, a standardized "Generic Notice of Non-Coverage" to each Medicare beneficiary whose physician concurs with the discharge decision and obtain the signature of the beneficiary or representative. Hospitals

would also deliver a “Detailed Explanation of Hospital Non-Coverage” to beneficiaries who choose to appeal the discharge.

Only two commenters submitted comments on the notices through the PRA process. However, we received over 500 comments on the regulation and several of these addressed the notices. The vast majority of commenters opposed the proposed process. One of the key issues for commenters was the overall need for the new generic notice. Many commenters noted that, because hospitals are already required to deliver the Important Message from Medicare (IM) to all Medicare inpatients, the proposal (generic notice at discharge and the detailed notice if the patient requests a review) actually constituted a 3-step notice process that adds unnecessary burden to hospitals and managed care plans. Many commenters stated that the current notice process—-delivery of the IM at or near admission, and a HINN if the beneficiary disputes the discharge decision--adequately informs beneficiaries of their appeal rights. Other commenters noted that problems with the current notice delivery process should be addressed before deciding to add another notice. These commenters agreed with many others that CMS should strengthen the current notice delivery process, rather than adding an additional notice at discharge.

Many commenters made recommendations for improving the current notice delivery process including revising the IM to be a more complete notice of discharge appeal rights (similar to the proposed generic notice), or replacing the IM with the proposed generic notice and providing it at or near admission. Several commenters suggested we allow the generic notice to be given at admission or during the course of the hospital stay, and some commenters recommended that the hospital review the information with the beneficiary and that the beneficiary sign the notice.

We carefully considered the numerous comments regarding the extent to which a new notice is needed. We recognize that the proposed generic notice contains nearly the same information as the IM, which is delivered at or near admission. Consistent with most commenters recommendations, we concluded that the most viable approach would be to build on the existing requirement that hospitals deliver the IM to all beneficiaries. Accordingly, the final rule establishes a revised version of the IM as the advance written notice of hospital discharge rights.

As revised, the IM will contain virtually all of the elements that would have been included in the proposed standardized generic notice and will continue to be delivered at or about the time of admission. Thus, the revised IM will continue to meet the requirements of section 1866(a)(1)(M) of the Act, including a statement of patients’ rights, information about when a beneficiary will and will not be liable for charges for a continued stay in a hospital, and a more detailed description of the QIO review process. We have revised requirements in the regulation regarding notice content to reflect these changes.

Similar to the proposed generic notice, the IM must be signed by the beneficiary (or representative, if applicable) to indicate that he or she comprehends its contents, and the hospital must retain a copy of the signed notice. The revised IM includes language stressing the importance of discussing discharge planning issues with physicians, plans, or hospital personnel to minimize the potential for disputes.

The IM is required to be given within 2 calendar days of admission and hospitals will be required to obtain the beneficiary's or representative's signature. Hospitals will also have to provide beneficiaries with a copy of the signed IM within 2 calendar days of discharge. Follow-up notice is not required if delivery of the original IM falls within 2 calendar days of discharge.

We believe that the revised notification process set forth in the final rule (CMS-4105-F) is consistent with the existing IM requirements, and also establishes much greater hospital accountability (and enforceability) for delivery of the IM. For patients who request a QIO review, the hospital will deliver a more detailed notice.

B. JUSTIFICATION

1. NEED AND LEGAL BASIS

Requirements that hospitals notify beneficiaries in inpatient hospital settings of their rights as a hospital patient including their discharge appeal rights are referenced in Section 1866(a)(1)(M) of the Social Security Act (the Act). The authority for the right to an expedited determination is set forth at Section 1869(c)(3)(C)(iii)(III) of the Act.

§405.1205, §422.620– The hospital must deliver valid, written notice (the IM) of a patient's rights as a hospital patient including the discharge appeal rights, within 2 calendar days of admission. A follow-up copy of the signed IM is given again as far as possible in advance of discharge, but no more than 2 calendar days before. Follow-up notice is not required if provision of the admission IM falls within 2 calendar days of discharge.

2. INFORMATION USERS

According to the 2004 Medicare CMS Statistics booklet published by the U.S. Department of Health and Human Services, in 2003 there were 6,057 hospitals participating in Medicare that potentially would need to issue the notices. There were approximately 13 million discharges. Therefore we estimate that about 11.3 million beneficiaries in Original Medicare and 1.7 million enrollees in Medicare Advantage would receive the Important Message from Medicare from hospitals annually. We estimate that approximately 60%, or 7.8

million of these beneficiaries, would need to receive the follow-up copy of the signed IM at or near discharge.

3. IMPROVED INFORMATION TECHNOLOGY

Hospitals must deliver a hard copy of the IM to beneficiaries or enrollees at the time of delivery, and a copy of the signed IM must be delivered at or near the time of discharge. There is no provision for alternative uses of information technology for the IM, although hospitals may choose to store the signed copy of the notice electronically.

4. DUPLICATION OF SIMILAR INFORMATION

Currently, upon admission to the inpatient hospital level of care, all beneficiaries and enrollees receive the statutorily required Important Message from Medicare that outlines the appeal rights available to them. In accordance with the settlement agreement associated with the Weichardt v Leavitt lawsuit, we proposed in CMS-4105-P, to require that a generic notice of non-coverage be delivered to all beneficiaries and enrollees 24 hours prior to discharge in addition to the IM.

However, as stated above, we received over 500 comments on the proposed rule and notice, many stating that the generic notice repeated information contained in the IM, and that CMS should consider revising the statutorily mandated IM to deliver information about appeal rights. Thus, in place of the proposed generic notice, we are revising the current IM which now will be a signed notice that will be given at or near the time of admission (within 2 calendar days of admission). A follow up copy of the signed notice will be delivered as soon as possible before discharge but no sooner than 2 calendar days before the discharge date. If delivery of the initial IM falls within 2 calendar days of discharge, delivery of the follow-up copy is not required.

5. SMALL BUSINESS

This information collection will affect small businesses, however, the new requirements have been designed to impose as little burden as possible on these providers. To simplify the notice structure, hospitals will use a single notice for both original Medicare beneficiaries and MA enrollees. Hospitals are already required to deliver the IM at or near admission. Instead of providing the additional generic notice as set forth in the proposed rule, hospitals would be required to deliver the IM and obtain the beneficiary's signature at or near admission and provide the beneficiary with a copy of the signed IM as soon as

possible but not more than 2 calendar days before discharge, except for short stays.

6. LESS FREQUENT COLLECTION

As commenters on the proposed rule associated with this collection suggested, we have combined the information from the proposed generic notice with the current IM in order to have a more complete explanation of patient rights, specifically discharge appeal rights.

Currently, hospitals or plans issue a HINN or NODMAR when the patient disagrees with the discharge decision. For the most part, these notices would no longer be necessary. With this new process, issuance of the IM, at or near admission and provision of a copy at or near discharge, the HINN and NODMAR, when used to notify patients of their right to a QIO review of a stay, will no longer be used. In the vast majority of cases, a beneficiary will agree to the discharge decision. In almost all other cases, beneficiaries who disagree with the discharge decision will initiate a QIO review, so that their stay can continue without liability until the QIO confirms the discharge decision or determines that the stay should continue. Only in the extremely rare instance where patients decide to remain in the hospital past the ordered discharge date and do not choose to initiate a review would they be notified of liability via a traditional liability notice akin to the existing HINN or NODMAR. We are planning to revise the HINN in the near future.

Moreover, providing the same notices to all beneficiaries and enrollees who are being discharged from an inpatient hospital stay ensures that all beneficiaries receive consistent information about the right to request a QIO expedited review of a discharge decision.

7. SPECIAL CIRCUMSTANCES

The regulations at §405.1205(b) and §422.620(b) require that the notices be validly delivered to either beneficiaries or, in circumstances where a beneficiary is unable to understand the notice, to their representatives.

8. FEDERAL REGISTER NOTICE/OUTSIDE CONSULTATION

A 60-day Federal Register notice was published on January 5, 2007.

Information about the notices and corresponding information will be published in the Federal Register. The proposed generic notice was published in the Federal Register on April 5, 2006 for a 60-day comment period. We considered feedback on this notice in our revisions to the IM. We also took into account beneficiary comments

made on the MA and original Medicare expedited determination notices in the non-hospital settings during consumer testing.

9. PAYMENT/GIFT TO RESPONDENT

We do not plan to provide any payment or gifts to respondents.

10. CONFIDENTIALITY

We are not collecting information. The provider and QIO will maintain records of notices and decisions, but those records do not become part of a federal system of records. Therefore, this item is not applicable.

11. SENSITIVE QUESTIONS

We do not require beneficiaries to answer any sensitive questions. Therefore, this item is not applicable.

12. BURDEN ESTIMATE

Notifying Beneficiaries and Enrollees of Hospital Discharge Appeal Rights (§405.1205 and §422.620)

The Important Message for Medicare (IM) is already required by statute to be provided to all Medicare beneficiaries. Currently, the burden associated with delivery of the IM is 1 minute per notice to 12.5 million Medicare beneficiaries per year; thus the burden estimate for this notice is 208,333 hours. Beginning July 1, 2007, hospitals will be responsible for delivering the IM to approximately 13 million Medicare beneficiaries, an extra 500,000 beneficiaries per year. The new process also entails explaining the notice and obtaining the beneficiary's signature, as well as delivering a follow-up copy of the signed notice in certain situations where the initial notice delivery does not take place within 2 days of the patient's discharge from the hospital. (We estimate that delivery of the follow-up copy will be needed for about 60 percent of discharges.)
We estimate that on average the new process for delivery of the IM, including obtaining the beneficiary signature, will take an extra 11 minutes. In addition, we estimate that delivery of the follow-up copy of the signed IM will take approximately 5 minutes, when necessary. Therefore, we estimate that the total additional burden associated with the new delivery procedures is approximately 14 minutes (in addition to the existing 1 minute above) on average. Thus, the total additional burden estimated with the delivery of the revised IM, and the follow-up copy, when needed, is 3,041,667 hours. The overall burden estimate for the IM delivery process is 3,250,000 hours (based on 15 minutes per patient, including the previous 1-minute burden estimate).

We note that in order to provide the hour and cost burden on Part II of the PRA submission worksheet, we combined the burden associated with the initial IM and delivery of the follow up copy into one response. The burden associated with appeal filing assistance is captured under the Detailed Explanation of Hospital Non-coverage PRA requirements.

13. CAPITAL COSTS

There are no capital costs associated with this collection.

14. COSTS TO FEDERAL GOVERNMENT

There is no cost to the Federal Government for this collection.

15. PROGRAM OR BURDEN CHANGES

Issuance of the IM is an existing collection. However, hospitals will now use the revised version of the IM to explain discharge rights. The increase in burden is due to the fact that hospitals must obtain the signature of the beneficiary or his or her representative and deliver a signed copy of the original notice within two calendar days of admission, and deliver a follow up copy of the signed notice within two calendar days of discharge.

16. PUBLICATION AND TABULATION DATES

These notices will be published on the Internet; however, no aggregate or individual data will be tabulated from them.

17. EXPIRATION DATE

We are not requesting exemption.

18. CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

C. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

There are no statistical methods associated with this collection.