

## Supporting Statement For Paperwork Act Submissions

### **A. Background**

Section 304(c) of Public Law 106-554 amended section 1886(d) (3) (E) of the Social Security Act to require CMS to collect data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index, for application beginning October 1, 2004 (the FY 2005 wage index). The purpose of the occupational mix adjustment is to control for the effect of hospitals' employment choices on the wage index. For example, hospitals may choose to employ different combinations of registered nurses, licensed practical nurses, nursing aides, and medical assistants for the purpose of providing nursing care to their patients. The varying labor costs associated with these choices reflect hospital management decisions rather than geographic differences in the costs of labor.

On April 4 and September 19, 2003, respectively, a proposed and final notice appeared in the *Federal Register* (68 FR 16516 and 54905) of CMS's intent to begin collecting occupational mix data from hospitals using the Medicare Wage Index Occupational Mix Survey, Form CMS-10079 (the 2003 survey). In the FY 2005 hospital inpatient prospective payment system final rule (IPPS, 69 FR 49034, August 11, 2004), CMS provided a full discussion of the 2003 survey and the application of the occupational mix adjustment to the FY 2005 wage index. The notice also included a summary of public comments and suggestions for improving the occupational mix survey. Similar comments and suggestions were received for the FY 2006 wage index (70 FR 47365).

On October 14, 2005, a notice appeared in the *Federal Register* (70 FR 60092) announcing CMS's proposed 2006 occupational mix survey, which included modifications intended to address commenters' concerns and suggestions. On February 10, 2006 a notice appeared in the *Federal Register* (71 FR 7047) announcing CMS's final 2006 occupational mix survey. The 2006 survey provided for the collection of hospital-specific wages and hours data, a 6-month prospective reporting period (January 1, 2006 through June 30, 2006). Although the 2006 survey expanded the RN category to include functional subcategories, it significantly reduced the number of discrete occupational categories that hospitals had to report. Data for advance practice nurses was excluded from the survey altogether while 6 fewer general occupational categories are discreetly reported (they are now included in the "all other occupations" category) because they are no longer part of the occupational mix adjustment.

CMS originally planned to apply the results of the 2006 survey beginning with the FY 2008 wage index. However, on April 3, 2006, in Bellevue Hosp. Ctr v. Leavitt, the Court of Appeals for the Second Circuit (“the Court”) ordered CMS to apply the occupational mix adjustment to 100 percent of the wage index effective for Federal fiscal year (“FY”) 2007. The Court required CMS to “immediately ... collect data that are sufficiently robust to permit full application of the occupational mix adjustment.” The Court also required that all “data collection and measurement and any other preparations necessary for full application should be complete by September 30, 2006, at which time we instruct the agency to immediately apply the adjustment in full.” 2006 WL 851934 at \*13.

To comply with the Court’s order, CMS immediately notified hospitals to submit occupational mix data for the first 3 months of the 6-month time frame previously announced for the 2006 survey, so that the new survey data could be applied to the FY 2007 wage index. CMS modified the FY 2007 IPPS proposed rule to announce that the occupational mix adjustment would be applied to 100 percent, rather than 10 percent of the FY 2007 wage index, and that the adjustment would be based on results from the new 2006 survey (see 71 FR 26844, May 17, 2006).

CMS received several public comments on this additional FY 2007 proposed rule requesting refinements of the occupational mix survey instructions and definitions.

- Commenters stated concerns regarding the placement of certain employees, such as surgical technicians, paramedics, and unit secretaries. The commenters expressed that these occupations perform similar functions, and in some cases, are used as substitutes for nursing staff. Therefore, they recommended that CMS include these occupations with the nursing categories on the survey. (On the 2003 and 2006 surveys, these categories were included in the All Other Occupations category.)
- Commenters recommended that CMS expand the list of cost centers for the survey to include additional ones that contain a significant number of nursing personnel.
- Some commenters suggested that CMS not collect occupational mix data for the RN subcategories. The commenters expressed concern that the inclusion of the subcategories led to errors and inconsistencies in reporting, and added to the hospitals’ collection burden. The commenters do not believe that this level of specificity significantly affects the adjustment. Therefore they recommended that CMS eliminate the RN subcategories.
- Commenters recommended that CMS provide for a 1-year data collection period rather than a 6-month data collection period for the next survey collection. The commenters suggested that a 1-year data collection period would provide a better representation of a hospital’s employment mix, which can vary during different times of the year. The commenters also

expressed that a 1-year collection period would allow hospitals to verify their wages and hours to year-end payroll reports and contractor invoices.

We have revised the occupational mix survey to address the concerns of comments received during the, February 2, 2007, 60-day *Federal Register* notice, to address the concerns listed above. The 2007/2008 survey will provide for the collection of hospital-specific wages and hours data for a 1-year prospective reporting period (that is, from July 1, 2007 through June 30, 2008), additional clarifications to the survey instructions, the elimination of the RN subcategories, some refinements to the definitions for the occupational categories, and the inclusion of additional cost centers that typically provide nursing services. The 2007/2008 Medicare occupational mix survey will be applied beginning with the FY 2010 wage index.

**B. Justification**

1. Need and Legal Basis

Section 304(c) of Public Law 106-554 mandates an occupational mix adjustment to the wage index, requiring the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program. The proposed data collection that is included in this submission complies with this statutory requirement.

2. Information Users

Each of the approximately 3,600 IPPS providers participating in the Medicare program will be required to complete the 2008 Medicare Wage Index Occupational Mix Survey. The survey will be forwarded to hospitals through CMS's fiscal intermediaries and will be made available on CMS's web site.

3. Use of Information Technology

The fiscal intermediaries will be required to forward the survey, an electronic spreadsheet, to each IPPS provider via email. Once the provider has completed the survey, the provider will transmit the survey back to the fiscal intermediary, who in turn will forward the survey to CMS.

4. Duplication of Efforts

There is no duplication of efforts.

5. Small Businesses

The collection of the occupational mix survey will affect the approximately 3,600 IPPS providers participating in the Medicare program. The providers will be required to submit the requested Medicare Wage Index Occupational Mix Survey every three years, as opposed to the submission of the current cost report wage data, which is submitted annually.

6. Less Frequent Collection

Section 304 of Public Law 106-554 requires CMS to collect occupational mix data no less than every three years. Failure to collect this data will result in CMS being in default of this mandate.

7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

The 60-day Federal Register notice for the approval of this submission was published on February 2, 2007.

CMS provided public notifications of the 2003 occupational mix survey in the Federal Register on April 4, 2003 (68 FR 16516), September 19, 2003 (68 FR 54905), May 18, 2004 (69 FR 28252), and August 11, 2004 (69 FR 49034). In response to those notices, CMS received several suggestions for improving the survey, from MedPAC, national and State hospital associations, hospitals, and others. CMS received additional comments and suggestions from the public after stating in the FY 2006 IPPS proposed rule (70 FR 23371, May 4, 2005) the agency's intent to revise the occupational mix survey for future data collections. CMS developed a new 2006 occupational mix survey that included the suggested improvements (70 FR 60092 and 71 FR 7047). In response to the FY 2007 IPPS proposed rule, we received additional comments for improving the survey. The proposed FY 2010 occupational mix survey reflects the public recommendations that CMS agrees would most likely contribute to improving the occupational mix adjustment to the wage index.

9. Payments/Gift to Respondents

There are no payments/gifts to respondents.

10. Confidentiality

This collection is public information. CMS does not assure confidentiality.

11. Sensitive Questions

There are no sensitive questions.

12. Burden Estimates (Hours & Wages)

We do not collect survey data for hospitals that become designated as critical access hospitals (CAHs) since the original survey data were collected in 2003 and for hospitals that terminated participation in the Medicare program. Currently, there are approximately 3,600 short-term and acute care hospitals in the Medicare program.

The occupational mix data for the 12-month survey period will be collected from July 1, 2007 through June 30, 2008. Although the data will be collected for a 12-month period of time from July 1, 2007 through June 30, 2008, we believe the information required for the survey will be available from hospital's existing recordkeeping systems. For this reason, we estimate the time associated with collecting the occupational mix data and submitting the data electronically to intermediaries to be 60 working days (60 days x 8 hours per day= 480 hours). We estimate 1,728,000 total burden hours for the 12-month collection (that is 3,600 hospitals x 480 hours= 1,728,000). When computed, assuming a current salary of \$25 per hour plus 20 percent for fringe benefits (\$30 per hour x 480 hours per hospital), the estimated cost of burden for the 12-month collection period is \$14,400 per hospital.

13. Capital Costs

We do not expect hospitals to have any capital costs associated with this revised collection effort. The information that hospitals provide should already be available through their existing systems.

14. Cost to Federal Government

The fiscal intermediary will be responsible for reviewing the survey for both collection periods, once received from the hospitals.

An auditor (fiscal intermediary) review of each hospital's occupational mix survey data for the 12-month collection period should take approximately 5 hours. When computed, 3,600 hospitals x 5 hours fiscal intermediary review per hospital x \$30 per hour plus 20 percent for fringe benefits (Auditor/Financial Analyst average hourly wage (AHW) based on annual salary of \$50,000 [estimated from OES survey]), the Federal cost is approximately \$648,000.

15. Changes to Burden

We do not require the occupational mix survey data to be completed by hospitals that have become designated as CAHs or hospitals that have terminated participation in the Medicare program. For the FY 2006 occupational mix survey,

we estimated that 3,800 hospitals would need to complete the survey based on the wage information that we collected at that time for the annual IPPS update. Currently, there are approximately 3,600 short-term and acute care hospitals participating in the Medicare program. We based this estimate on the number of hospitals that submitted wage index information for the FY 2007 IPPS rule.

We are revising the occupational mix survey to address the concerns of comments received during the, February 2, 2007, 60-day *Federal Register* notice. The 2007/2008 survey will provide for the collection of hospital-specific wages and hours data for a 1-year prospective reporting period (that is, from July 1, 2007 through June 30, 2008), additional clarifications to the survey instructions, the elimination of the RN subcategories, and some refinements to the definitions for the occupational categories. We are also expanding the current cost center list to include cost center 57 – Renal Dialysis, because this cost center also utilizes a high percentage of nursing staff. The 2007/2008 Medicare occupational mix survey will be applied beginning with the FY 2010 wage index. **[For more details, please refer to the Medicare Wage Index Occupational Mix Survey - Summary of Changes.]**

The estimated burden hours for the 2008 Occupational Mix survey associated with a 12-month collection period will be increased from 1,216,000 hours to 1,728,000 hours.

16. Publication/Tabulation Dates

The information provided by the survey will be made public through the CMS public use file website and the proposed and final rules in the Federal Register for fiscal year FY 2010.

17. Expiration Date

CMS would like an exemption from displaying the expiration date as these forms are used on a continuing basis. To include an expiration date would result in having to discard a potentially large number of forms.

18. Certification Statement

There are no exceptions to the certification statement.

C. Collection of Information Employing Statistical Methods

There are no statistical methods.

