

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

Subtitle B of Title I of ERISA, Part 7, Section 707, added by the Health Care Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, enacted August 21, 1996) provided that the Secretary of Labor, in coordination with the Secretaries of Health and Human Services (HHS) and the Secretary of the Treasury, might promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. HIPAA also authorized the Secretary to promulgate these rules as interim final rules as appropriate to carry out the provisions of the new Part 7. The Mental Health Parity Act of 1996 (MHPA), Pub. L. 104-204, enacted September 26, 1996, amended Part 7 of Title I of ERISA, and re-designated Section 707 as Section 734. Title I, Section 505 of ERISA further provides that the Secretary of Labor may prescribe regulations that are determined to be necessary or appropriate to carry out the provisions of Title I.

Accordingly, the Departments published interim final rules to implement parity in the application of certain limits to mental health benefits on December 22, 1997 (62 FR 66931). MHPA generally requires that group health plans (and health insurance coverage offered in connection with group health plans) which offer both medical/surgical and mental health benefits, not impose aggregate lifetime or annual dollar limits on mental health benefits that are lower than the aggregate lifetime or annual dollar limits imposed on medical/surgical benefits.

The requirements of MHPA were originally effective for plan years that began on or after January 1, 1998, but did not apply to benefits for services furnished on or after September 30, 2001, when the provisions of MHPA were to sunset. Subsequently, the sunset date for MHPA was extended, and the interim final rules have been amended through interim final amendments extending the applicability of the interim final rules.¹

MHPA generally does not apply to group health plans or group health insurance coverage

¹ MHPA, Pub.L. 104-204, Sept. 26, 1996. DOL interim final regulations, Dec. 22, 1997 (62 FR 66931). Pub .L. 107-116, extending the original sunset date to Dec.30, 2002. Pub. L. 107-147, extending the original sunset date to Dec. 31, 2003. DOL interim final amendment, Sept. 30, 2001 (67 FR 60859). Pub. L. 108-197 extending the original sunset date to Dec. 31, 2004. DOL interim final amendment, Jan. 26, 2004 (69 FR 3815). Pub.L. 108-31, extending the original sunset date to Dec. 31, 2005. DOL interim final amendment, Dec. 27, 2004 (69 FR 75788). Pub. L. 109-151 extending the original sunset date to Dec. 31, 2006. DOL interim final amendment, March 20, 2006 (71 FR 13937). Pub. L. 109-432, extending the original sunset date to Dec. 31, 2007. DOL interim final amendment, Feb. 27, 2007 (72 FR 8628).

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offered in connection with a group health plan that are sponsored by small employers, or to group health plans (or health insurance offered in connection with a group health plan) if the application of the requirements results in a cost increase of at least one percent.

The interim rules describe the basis upon which a group health plan (or coverage) may elect to use the one percent exemption, including a definition of the minimum period of time to be included in the computation of the percentage increase applicable to implementation of mental health parity, and the specific claims and administrative expenses to be included in the computation.

The information collection request (ICR), which consists of a notice to participants and beneficiaries and the government, is necessary in order for plans and issuers to demonstrate that they have met the requirements for the one percent exemption, and for participants and beneficiaries to become aware of a plan's or issuer's election of the exemption from the requirements of MHPA due to an increase in plan costs of at least one percent. Under the interim rules at 29 CFR 2590.712(f)(3)(i) and (ii), the plan may not implement the exemption until 30 days after notification of participants and beneficiaries, so that affected parties will be fully aware in advance that the limits imposed on mental health benefits under the plan are not consistent with those otherwise required under plans not exempt from parity requirements. A copy of the notice sent to participants and beneficiaries is also required by the interim rules to be sent to the federal government in order for the plan to elect the exemption.

The Departments sought to mitigate the impact of the necessary reporting, disclosure, and recordkeeping requirements and reduce compliance costs borne by the regulated public, while preserving protections for participants and their beneficiaries in several ways. The rules specifically describe a limited number of data elements that are required to be included in the notice. Further, the rules include a single model notice, which may be used by a plan electing the exemption to satisfy the requirement for notice to both participants and beneficiaries and to the federal government. Under the rules, plans may also satisfy the notification requirement by supplying participants and beneficiaries and the federal government with a summary of material reductions in covered services or benefits in accordance with 29 CFR 2520.104b-3(d) with respect to election of the one percent increased cost exemption. Plans may already have established procedures with respect to summaries of material modifications, as such summaries are required to be supplied to participants and beneficiaries from time to time in accordance with 29 CFR 2520.104b-3(d).

The notice to participants and beneficiaries and the federal government is required to be provided only once to participants and beneficiaries and to the federal government after the plan has determined that it is eligible to elect the exemption and 30 days before making use of the exemption.

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2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

Group health plans use this ICR to obtain the benefit of the exemption from the requirement that they provide for parity between mental health benefits and medical/surgical benefits. Participants and beneficiaries use the ICR to be informed of the benefits available to them under their group health plans. The federal government may monitor the application of the interim rules by group health plans affected by MHPA and may make notices of election of the one percent cost exemption available for public inspection as a result of this ICR.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.*

The Department has published rules at 29 CFR 2520.104-1(c) that describe the conditions under which the use of electronic technologies for ERISA disclosure purposes will be deemed to satisfy the requirements for fulfilling disclosure obligations. Plan administrators may use electronic technologies to comply with the information collection provisions of the interim final rules related to MHPA so long as they comply with those conditions.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government. EBSA does not currently receive MHPA notices electronically.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

Despite state reforms in the laws affecting the group health insurance market as it pertains to mental health benefits, prior to the implementation of MHPA, group health plans and health insurance issuers have not been permitted to make use of an exemption from required contract provisions based on the associated increased costs. While participants and beneficiaries are generally required by both ERISA and state insurance statutes to be informed of the specific provisions of their group health plans, Department staff are not aware of any circumstances in which participants and beneficiaries are required to be advised when the provisions of their coverage differ from provisions otherwise required by statute. Therefore, this information is not duplicated by another source.

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5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

MHPA includes an exemption for small plans in addition to the exemption for plans that would incur a one percent increase in costs as a result of implementing parity in mental health benefits. Parity requirements under MHPA and the interim rules do not apply to any group health plans for any plan year of a small employer. As such, this ICR does not impose a significant economic impact on small employers, generally defined for purposes of the MHPA, as an employer who employed an average of from 2 to 50 employees on business days during the preceding calendar year.

The Departments sought to mitigate the impact of the necessary reporting, disclosure, and recordkeeping requirements and reduce compliance costs borne by the regulated public, while preserving protections for participants and their beneficiaries in several ways. The interim rules specifically describe a limited number of data elements that are required to be included in the notice. Further, the rules include a single model notice, which may be used by a plan electing the exemption to satisfy the requirement for notice to both participants and beneficiaries and the federal government. Under the rules, plans may also satisfy the notification requirement by supplying participants and beneficiaries and the federal government with a summary of material reductions in covered services or benefits in accordance with 29 CFR 2520.104b-3(d) with respect to election of the one percent increased cost exemption. Plans normally have procedures in place with respect to summaries of material modifications, because such summaries are required to be supplied to participants and beneficiaries from time to time in accordance with 29 CFR 2520.104b-3(d).

The notice to participants and beneficiaries and the federal government is required to be provided only once to participants and beneficiaries and to the federal government after the plan has determined that it is eligible to elect the exemption and 30 days before making use of the exemption.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

This collection was undertaken to help the regulated community implement the requirements of MHPA consistently. Because the notice is required to be provided one time only, there is little opportunity for discretion in conducting the collection of information “less frequently” than the single instance in which it is required during this period.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*

- *requiring respondents to report information to the agency more often than quarterly;*

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- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- *requiring respondents to submit more than an original and two copies of any document;*
- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

None.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department's notice pursuant to 5 CFR 1320.8(d), was published on September 21, 2007 (72 FR 54072). No comments were received.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

Not applicable.

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10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

The copies of notices provided to the government are available for inspection by the public at the Department of Labor. Accordingly, the Department provides no assurance of confidentiality to respondents.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

Not applicable.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.*

The MHPA interim rules require plans electing the one percent increased cost exemption to notify participants and the government of that election. The hour burden attributable to these notifications was estimated by examining the actual number of notices received by the government in previous years (10 respondents), estimating that each such plan had at least 1,000 participants (10,000 notices), and assuming that distribution of those notices would require 2 minutes, for a total of about 300 hours.² The costs of these hours at a \$25 clerical wage rate³

² Please note that the numbers shown in the text are rounded to the nearest 100 or 1,000: 10,000 responses * 2 minutes = 333.33 hours.

³ Hourly wage estimates are based on data from the Bureau of Labor Statistics Occupational Employment Survey (May 2005) and the Bureau of Labor Statistics Employment Cost Index (Sept. 2006). Clerical wage and benefits

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would be approximately \$8,000.⁴

The per-notice hour burden was assumed to be 2 minutes. The model form may be completed with only 4 pieces of readily available information. Each of the data elements in the model form (other than the effective date of the exemption) is required to be maintained by the plan administrator and reported to participants in other circumstances, pursuant to ERISA statutory provisions and regulations relating to format and production of SPDs, SMMs, and Summary Annual Reports (SARs).

There is no preparation burden associated with this notification requirement. The preamble to the interim final rules provides a model notification, thereby permitting plans to avoid the cost of preparing their own forms.

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.*

There is no capital or start up cost associated with this requirement. The Department assumes that 10 plans are using the exemption and are sending out a total of 10,000 notices. If the notices include up to 5 pages paper costs of \$0.25 (5 cents per page) and postage costs of \$0.41 are incurred per notice. Therefore, the total cost burden is estimated at approximately \$7,000.⁵

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

The annualized cost to the Federal government for this collection is nominal. Only ten notices have been received since implementation of the requirement.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

The Department has adjusted the wage and postal rates to account for cost increases between 2004 and 2007. This resulted in slightly higher cost burdens. The reduction in burden hours is due to rounding.

16. *For collections of information whose results will be published, outline plans for tabulation, and*

estimates are based on metropolitan wage rates for executive secretaries and administrative assistants.

4 Please note: 10,000 notices * 2 minutes * \$25 hourly wage rate = \$8,333.33.

5 Please note: 10,000 notices * (5 pages * 5 cents material costs + \$0.41 postage) = \$6,600.

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publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The results of this collection of information will not be published.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

The information collection will display the control number and expiration date.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

There are no exceptions to the certification statement.