

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 the Employee Retirement Income Security Act of 1974 (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, provides that the Secretary of Labor, in coordination with the Secretaries of Health and Human Services (HHS) and the Secretary of the Treasury, may promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. HIPAA also authorizes 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 redesignated 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 which are lower than the aggregate lifetime or annual dollar limits imposed on medical/surgical benefits. The requirements of MHPA are effective for plan years which begin on or after January 1, 1998, but do not apply to benefits for services furnished on or after December 31, 2007. MHPA generally does not apply to group health plans or group health insurance coverage offered in connection with a group health plan which 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, among other things, the basis upon which a group health plan (or coverage) may elect to use the one percent exemption. The reporting, disclosure, and recordkeeping requirements of the interim rules arise from the statutory provision with respect to this one percent cost exemption. The interim rules define 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 in the event that the plan elects the one percent cost increase exemption.

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This information collection request (ICR) found in the interim rules at 29 CFR 2590.712(f) (4) requires the plan to maintain group health plan claims and administrative expense records in such a way that they can be used to demonstrate the applicability of the one percent cost increase exemption as defined in the interim rules, and that a summary of that information can be provided at the request of participants and beneficiaries or their representative at no charge. The ICR 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 have access to information which formed the basis for a reduction in their mental health benefits from what would have been required by MHPA had the plan not qualified for the exemption. Under the interim rules, the plan may not implement the exemption until 30 days after notification of participants and beneficiaries (this notification is covered under a separate ICR); this notification must include a statement indicating that the summary of documentation of eligibility for the exemption is available upon request and free of charge.

The interim rules specifically identify how the eligibility for the one percent cost increase exemption is to be determined, and permit the plan to supply the summary of eligibility only to those participants, beneficiaries, and representatives who request the information. Because the plan's election of the exemption may occur only once and may remain in effect through December 31, 2005, it is anticipated that disclosure of the summary of the information, which formed the basis for the election of the exemption, would occur no more than once for each participant or beneficiary.

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 will use the ICR to be informed of the benefits available to them under their group health plans and to verify or dispute the applicability of the exemption which may serve to limit benefits which would otherwise be available to them.

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.*

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, "where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by

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direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

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.

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 state law parity requirements 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.

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 which experience 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. A small employer is generally defined as one 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. The interim rules specifically identify

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how the eligibility for the one percent cost increase exemption is to be determined, and permit the plan to supply the summary of eligibility to only those participants, beneficiaries, and representatives who request the information. The interim rules also define how eligibility for the exemption is to be determined in the event a group health plan participates in an experience pooling arrangement, which is often the case with plans of small employers. The rule will also clarify for small plan employers how the information supporting election of the exemption can be compiled and made available to participants and beneficiaries who request it.

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.*

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. Under the interim rules, the summary documentation is required to be provided only as frequently as a given participant or beneficiary considers necessary.

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;*
 - *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*

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- *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 published 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.*

No payments or gifts are provided to respondents.

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

No assurance of confidentiality is provided to respondents relative to this ICR. The interim rules do, however, require that no individually identifiable information be included in the summary documentation.

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*

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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 disclose on request to participants summary documentation of their eligibility for the exemption.

The Department assumes that for each plan legal professionals spend about 10 hours of time preparing the summary documentation, assuming a legal professional hourly wage rate of \$106.¹ The Department continues to assume that 10 plans will be relying on the exemption. Thus, the total

¹ 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). Legal professional wage and benefits estimates are based on metropolitan wage rates for lawyers. Clerical wage and benefits estimates are based on metropolitan wage rates for executive secretaries and administrative assistants.

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hour burden for preparation is assumed to be 100 hours, with an equivalent cost burden of about \$11,000.²

The Department further assumes that all plans will receive at least one request, and that two percent of participants will make such a request. Assuming that each plan has on average 1,000 participants leads to an estimate of 200 requests.³ Processing each request and sending out the summary documentation is assumed to take about 3 minutes for each notice and disclosure. The resulting hour burden estimate is 10 hours. The equivalent costs of these hours would be about \$250, assuming a clerical hourly compensation rate of \$25.⁴

Table 1	Hour Burden	Equivalent Costs
Preparing Summary Documentation	100 hours	\$10,600
Processing and Distribution of Notices/Documentation	10 hours	\$250
Total	110 hours	\$10,850

As shown in Table 1 above, this leads to a total hour burden of about 100 hours, with total equivalent costs of about \$11,000.

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

The Department assumes that the notices and documentation that participants request will consist of 10 pages which will be sent out by mail. With material costs of 5 cents per page and postage of \$0.58, the mailing and materials costs of the 200 notices lead to a cost estimate of approximately \$200.⁵

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.*

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

² Hours for preparation: 10 plans * 10 hours each = 100 hours. Equivalent Costs: 100 hours * \$106 = \$10,600. The hours displayed in the text are rounded to the nearest 100 or 1,000.

³ Number of requests = 10 plans * 1,000 participants each * 2% = 200 requests.

⁴ Please note: 200 requests * 3 minutes = 600 minutes = 10 hours. 10 hours of clerical time * \$25 = \$250.

⁵ Please note: 200 notices * (10 * 5 cents mailing cost + \$0.58 postage) = \$216.

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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 made two changes that will increase the burden estimates. It adjusted the wage and postal rates to account for costs increases between 2004 and 2007, and has added an hour burden for preparing summary documentation. While this material might be created in the process of normal business practices, the Department believes that adding the burden presents a more accurate picture of the estimated paperwork burden resulting from this regulation's information collection provisions.

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