

SUBJECT: Request for Emergency Clearance of the Paperwork Reduction Act Package for the Survey of Contract Labor in Selected Health Industries, Authorized Under Section 404 of the Medicare Prescription Drug and Modernization Act (MMA) of 2003.

The Office of the Actuary (OACT), Centers for Medicare and Medicaid Services (CMS) is requesting emergency review and approval of an information collection request (ICR) for a one-time, seven-question survey of professional contract labor costs in selected health industries. This is the resubmission of CMS-10177. The survey will empirically quantify the locally-purchased and nationally-purchased proportions of professional contract labor costs incurred by hospitals, skilled nursing facilities (SNF), and kidney dialysis centers (ESRD). The results of this study will determine the proportion of professional contract labor costs that should be included in the labor-related share (LRS). The LRS of Medicare perspective payment system (PPS) payments is the proportion of said payment that is subject to the area wage index adjustment. This adjustment accounts for geographic variation, thus the survey will directly impact the distribution of Medicare hospital and SNF payments to PPS providers. ESRD providers are not paid prospectively at this time, although that appears likely at some point in the future.

We have three reasons to request an emergency clearance process. First, according to 5 CFR 1320.13(a)(2)(iii): “The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.” The approval of this data collection process is essential to meet the requirements of Section 404 of the Medicare Prescription Drug and Modernization Act (MMA) of 2003 and its applicability to the hospital market basket. This section of the MMA requires the Secretary of Health and Human Services to, “... establish a frequency for revising such [market basket] weights *including the labor share*, in such market basket to reflect the most current data available more frequently than every five years.”

The current hospital market basket was rebased and revised in 2005 and went into effect in FY 2006. The next rebasing and revision, by law, must occur by 2009 and will go into effect in FY 2010. As the law specifically calls attention to the labor-related share, CMS requires this data to more accurately determine the appropriate proportion of contract labor costs that should be included in the LRS. This will enhance CMS’s ability to more accurately adjust payments for geographic variation.

Second, according to 5 CFR 1320.13(a)(1)(ii), this data collection “Is essential to the mission of the agency.” CMS’s mission is to “Ensure effective, up-to-date health care coverage and to promote quality care for its beneficiaries.” To achieve that mission, the agency has identified five key objectives, of which two are related to this request. They include: (1) Make accurate and predictable payments; and (2) High value health care. In an administered pricing health care system, it is critical to have all the necessary information needed to determine fair and efficient payments. The results of this survey substantially reduce the need for assumption regarding what proportion of professional contract labor costs should be captured in the labor-related share and will thus result in 1) more accurate payments, and 2) greater value for our Medicare dollar.

Finally, under 5 CFR 1320.13(a)(2)(ii), unanticipated events have occurred to delay this collection for two years. CMS originally initiated the OMB approval process for this ICR with the publication of the 60-day Federal Register notice on December 5, 2005 (70 FR 73250). The 30-day Federal Register notice published February 2006 (71 FR 8588). It should be noted that CMS did not receive any public comments during either of the comment periods associated with the aforementioned notices. We formally submitted this information collection for OMB approval on March 3, 2006. The OMB asked CMS to withdraw and resubmit a revised ICR on January 8, 2007. The resubmission was to include responses to OMB passback questions. However, due to circumstances beyond our control, CMS never received the OMB passback questions, and we had to revise our implementation timeline accordingly to account for the delay. Consequently, to allow sufficient time to launch the survey, follow-up with non-respondents, analyze the data, work with other stakeholders on the impacts of the findings, and include the results in the next rebasing of the hospital market basket, we are requesting emergency approval.

Project Background

The Section 404 of the MMA requires OACT to rebase the hospital market basket more frequently than once every 5 years and specifically refers to the labor-related share of the market basket. OACT has recently begun the process of rebasing the hospital market basket for implementation in FY 2010. Final rule publication is set for the August 2009 Federal Register, 4 years following the previous rebasing. Time is needed to prepare, conduct, and evaluate the proposed survey's results; in addition, time is needed to incorporate these results into the construction of the market basket as to allow for public comment. The proposed rule will be published in the May 2009 Federal Register.

The purpose of this survey is to determine what proportion of professional contract labor costs incurred by hospitals, SNFs, and ESRDs is purchased in the local labor market. Professional contract labor costs include services such as accounting and auditing, engineering, legal, and management consulting services. Currently, CMS assumes 100 percent of these services are purchased in local labor markets and, hence, all costs are included in the market basket's labor-related share. More accurate classification of contracted professional services will directly lead to more accurate payments to Medicare's PPS providers.

In the absence of an emergency approval, it is likely the survey results will not be collected in time to be incorporated into FY2010 the market basket rebasing. This will affect the accuracy of Medicare payments to rural and urban hospitals until such time that the results can be incorporated in a subsequent market basket rebasing.

In November 2005, MacroSys Research and Technology was awarded the contract to conduct the survey. The contract was set to expire at the end of the 2006 fiscal year, however due to delays in the survey approval process, this contract has been extended several times. Once approval is provided, the contractor stands ready to conduct the survey immediately. We anticipate the survey will be completed in seven to eight months—in time for the FY2010 market basket rebasing.

Requested and Proposed Timelines

<u>Date</u>	<u>Activity</u>
11/2007	Submit emergency justification to OMB
11/2007	Receive approval to submit emergency package to OMB
11/2007	Publication in the Federal Register Document
12/2007	Beginning of 15-day public comment period and OMB review
12/2007	End of public comment period
12/31/2007	Requested date of OMB approval
01/2008	Administer provider survey
07/2008	Conclude provider survey
08/2008	Begin analysis of results
09/2008	Begin incorporation of results into rebased FY2010 hospital market basket construction
10/2008	Begin discussions with policymakers/other stakeholders on impacts
02/2009	Include final results in CMS clearance process for Notice for Proposed Rule Making (NPRM); hospital rule
04/01/2009	Publish NPRM
8/01/2009	Publish Final Rule

We respectfully request emergency approval of this survey of contract labor in selected health industries.

If you have any questions, please contact:

Bill Parham
OSORA/PRA
Telephone: (410) 786-4669