Supporting Statement For Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens, Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA).

## A. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations of medical conditions, as well as necessary stabilizing treatment or appropriate transfer. In addition, section 1867(h) of the Act specifically prohibits a delay in providing required screening or stabilization services in order to inquire about the individual's payment method or insurance status. Section 1867(d) of the Act provides for the imposition of civil monetary penalties on hospitals responsible for negligently violating a requirement of that section, through actions such as the following: (a) Negligently failing to appropriately screen an individual seeking medical care; (b) negligently failing to provide stabilizing treatment to an individual with an emergency medical condition; or (c) negligently transferring an individual in an inappropriate manner. (Section 1867(e)(4) of the Act defines "transfer" to include both transfers to other health care facilities and cases in which the individual is released from the care of the hospital without being moved to another health care facility.)

These provisions, taken together, are frequently referred to as the “Emergency Medical Treatment and Labor Act” (EMTALA), also known as the “patient antidumping statute.” EMTALA was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Congress enacted these antidumping provisions in the Social Security Act because of its concern with an increasing number of reports that hospital emergency rooms were refusing to accept or treat individuals with emergency conditions if the individuals did

not have insurance.

Section 1011 provides $250 million per year for fiscal years (FY) 2005 through 2008, for payments to eligible providers for emergency health services provided to undocumented and other specified aliens. From the respective state allotments, payments are made directly to hospitals, certain physicians, and ambulance providers for some or all of the costs of providing emergency health care required under section 1867, and related hospital inpatient, outpatient and ambulance services to eligible individuals. Eligible providers may include an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization. A Medicare critical access hospital (CAH) is also a hospital under the statutory definition. Payments under Section 1011 may only be made to the extent that care was not otherwise reimbursed (through insurance or otherwise) for such services.

Payments are made only for services furnished to certain individuals described in the statute as: 1) undocumented aliens; 2) aliens who have been paroled into the United States at a port of entry for the purpose of receiving eligible services; and 3) Mexican citizens permitted to enter the United States under the authority of a biometric machine readable border crossing identification card (also referred to as a "laser visa") issued in accordance with the requirements of regulations prescribed under a specific section of the Immigration and Nationality Act.

## B. Justification

### 1. Need and Legal Basis

Section 1011 of the MMA provides that the Secretary will establish a process (i.e., enrollment and claims payment) for eligible providers to request payment. The Secretary must directly pay hospitals, physicians and ambulance providers (including Indian Health Service, Indian tribe and tribal organizations) for their otherwise un-reimbursed costs of providing services required by section 1867 of the Social Security Act (EMTALA) and related hospital inpatient, outpatient and ambulance services.

### 2. Information Users

CMS will use the application information to administer this health services program and establish an audit process.

3. Use of Information Technology
This collection does not lend itself to electronic collection methods.

4. Duplication of Similar Information
There is no duplicative information collection instrument or process.

5. Small Businesses
N/A

6. Less Frequent Collection
This information is collected on an as-needed basis. Collecting this information less frequently would cause providers not to be paid for emergency services provided to undocumented and certain other aliens.

7. Special Circumstances
There are no special circumstances associated with this collection.

8. Federal Register/Outside Consultation
The 60-day Federal Register notice was published on January 11, 2008. No public comments were received for the 60-day Federal Register notice.

9. Payments/Gifts to Respondents
N/A

10. Confidentiality
CMS will comply with all privacy, and Freedom of Information laws and regulations that apply to this collection.

11. Sensitive Questions
There are no sensitive questions associated with this collection.

12. Burden Estimates (Hours & Wages)

Historical provider enrollment data indicate that the number

of Section 1011 provider enrollment applications received annually by the Section 1011 program remains steady at approximately 10,000 per year (based on data collected from July 2005 through December 2007). We expect the number of enrollment applications to continue at the same rate. Most enrollment applications are received from physicians who seek to enroll in the Section 1011 program for the first time. For this reason, we estimate that, on average, it will require 30 minutes per respondent to complete and submit the form.

The total respondent burden is estimated to be 10,000 provider responses x 30 minutes (4,998 hours) x $15 per hour = $74,970.

13. Capital Costs
There are no capital costs associated with this collection.

14. Cost to Federal Government
There are no additional costs to the Federal government. Applications will be processed in the normal course of federal duties.

15. Changes to Burden
The estimated annual responses decreased from 62,500 annual responses to 10,000 annual responses, a difference of 52,500 annual responses. The Annual Hour Burden decreased from 31,250 hours to 4,998 hours, a difference of 26,252 hours. Changes to burden are due to the use of actual historical program enrollment data as opposed to using estimates. Current calculations are made based on historical program data collected from July 2005, to December 2007.

16. Publication/Tabulation Dates
N/A

17. Expiration Date
We plan to display the expiration date.

18. Certification Statement
There are no exceptions to item 19 of OMB Form 83-I.

**C. Collections of Information Employing Statistical Methods**

N/A