

Justification for Emergency PRA Clearance
Re: An Independent Comprehensive Study and Report to Congress

Subject: Request for Emergency Clearance of the Paperwork Reduction Act Package to Collect State Medicaid Information for a Mandated Report to Congress

The Center for Medicaid and State Operations (CMSO) is requesting emergency approval of a Paperwork Reduction Act (PRA) package for a one-time collection of information from State Medicaid programs. Emergency approval is requested under 5 CFR 1320.13(a)(2)(iii), as we believe that the use of normal clearance procedures is reasonably likely to cause a statutory deadline to be missed.

The information collection process is to consist of a series of interviews with State Medicaid program officials as well as requests for operational data. The information to be collected is required to comply with a congressionally mandated study that is due to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate no later than September 1, 2009 according to in Section 7001(c)(2) of the Supplemental Appropriations Act, 2008 (SAA, P.L. 110-252).

We believe that several months will be required for collecting information on all four regulations from 51 State programs (at least 204 interviews), as well as conducting analyses, and preparing a report to Congress by September 1, 2009. Therefore, we request emergency approval of the PRA package.

Background:

Beginning in early 2007, CMS issued several regulations that were part of an effort to reduce ambiguity and ensure sound fiscal management of the Medicaid program. The four regulations that are subject to the above mentioned report are the following:

- (1) Proposed rule, published January 18, 2007 – Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Partnership (CMS-2258-P).
- (2) Proposed rule, published May 23, 2007 – Medicaid Program; Graduate Medical Education (GME) (CMS-2279-P).
- (3) Proposed rule, published August 13, 2007 – Medicaid Program; Coverage for Rehabilitative Services (CMS-2261-P).
- (4) Final rule, published December 28, 2007 – Medicaid Program; Elimination of Reimbursement under Medicaid for School Administration Expenditures and

Costs Related to Transportation of School-Age Children Between Home and School (CMS-2287-F).

As a result of public feedback and Congressional concern regarding the impact of these regulations, CMS was precluded from implementing or enforcing any of these regulations through various Congressional moratoria. Language contained in Section 7001(a) (2) of the Supplemental Appropriations Act of 2008 (SAA, P.L. 110-252), requires the secretary of HHS to procure a contractor to conduct an independent comprehensive study and report to Congress by September 2009. The report is to include:

- (1) The prevalence of the problems that the Medicaid regulations are meant to address
- (2) Strategies in existence to address these problems
- (3) An assessment of the impact of each regulation on each state and the District of Columbia

The contractor is tasked with collecting information from all 50 states and the District of Columbia regarding the Medicaid related regulations listed above. In addition, the appropriations language authorizes the Secretary of Health and Human Services to impose penalties to each state that does not cooperate in providing information requested to complete the report to Congress. States can be assessed \$25,000 per day for each day that they do not comply.

A contract was awarded to conduct the information collection and the contractor is currently developing the data collection tools, consisting of interview questions and data requests that will be used for this project. The contractor plans to begin collecting information this spring in order to comply with the statutorily mandated Report to Congress date of September 1, 2009.

The appropriations language requiring the Report to Congress is attached.

Requested and Proposed Timeline:

Date	Activity
03/31/2009	Submit emergency justification to OMB
04/03/2009	Receive approval to submit emergency package to OMB
04/10/2009	Publication of Emergency Federal Register Document
04/10/2009	Beginning of 30 day public comment period and concurrent OMB review of package
05/09/2009	End of public comment period
05/12/2009	Requested date of OMB approval

5/13/2009	Initiate information collection process with state Medicaid programs
7/31/2009	Conclude information collection process with state Medicaid programs
8/24/2009	Contractor submits report to CMS
9/1/2009	Due Date of Report to Congress

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Attachment for an Independent Comprehensive Study and Report to Congress

H.R. 2642 [110th]: Supplemental Appropriations Act, 2008

7001. 2) INDEPENDENT COMPREHENSIVE STUDY AND REPORT-

(A) IN GENERAL- Not later than January 1, 2009, the Secretary of Health and Human Services shall enter into a contract with an independent organization for the purpose of--

(i) producing a comprehensive report on the prevalence of the problems outlined in the report submitted under paragraph (1);

(ii) identifying strategies in existence to address these problems; and

(iii) assessing the impact of each regulation referred to in such paragraph on each State and the District of Columbia.

(B) ADDITIONAL MATTER- The report under subparagraph (A) shall also include--

(i) an identification of which claims for items and services (including administrative activities) under title XIX of the Social Security Act are not processed through systems described in section 1903(r) of such Act;

(ii) an examination of the reasons why these claims for such items and services are not processed through such systems; and

(iii) recommendations on actions by the Federal government and the States that can make claims for such items and services more accurate and complete consistent with such title.

(C) DEADLINE- The report under subparagraph (A) shall be submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than September 1, 2009.

(D) COOPERATION OF STATES- If the Secretary of Health and Human Services determines that a State or the District of Columbia has not cooperated with the independent organization for purposes of the report under this paragraph, the Secretary shall reduce the amount paid to the State or District under section 1903(a) of the Social Security Act ([42 U.S.C. 1396b\(a\)](#)) by \$25,000 for each day on which the Secretary determines such State or District has not so cooperated. Such reduction shall be made through a process that permits the State or District to challenge the Secretary's determination.

(3) FUNDING-

(A) IN GENERAL- Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary without further appropriation, \$5,000,000 to carry out this subsection.

(B) AVAILABILITY; AMOUNTS IN ADDITION TO OTHER AMOUNTS APPROPRIATED FOR SUCH ACTIVITIES- Amounts appropriated pursuant to subparagraph (A) shall--

(i) remain available until expended; and

(ii) be in addition to any other amounts appropriated or made available to the Secretary of Health and Human Services with respect to the Medicaid program.