Supporting Statement for Paperwork Burden Reduction Act
State Plan Preprints to Implement Sections 6083; 6036; 6041, 6042, and 6043; and 6044 of the Deficit Reduction Act (DRA) of 2005
0938-0993 (CMS-10190)

A. Background

The DRA provides States with numerous flexibilities in operating their State Medicaid programs. For example, section 6083 of the DRA (Non-emergency Medical Transportation Brokerage Program) provides that States can submit a State plan amendment (SPA) to establish a non-emergency medical transportation brokerage program. Section 6036 (Documentation of Citizenship) provides that States must require applicants to submit proof of citizenship and provide documentation. Section 6041, 6042 and 6043 (Alternative Premiums/Cost Sharing Including Premiums and Cost Sharing for Emergency Services and Prescriptions Drugs) provides States with the flexibility to impose alternative premiums and cost sharing and section 6044 (Alternative Benefit Packages) provides States with the flexibility to provide for alternative benefit packages for Medicaid beneficiaries. The intent of these flexibilities is to provide States with program alternatives that allow them to provide the most appropriate health care coverage that meets beneficiary needs, while at the same time curtailing State and Federal spending.

Except for the documentation of citizenship requirements, States can submit SPAs to CMS to effectuate these changes to their Medicaid programs. CMS provided State Medicaid Directors letters providing guidance on these provisions and the implementation of the DRA and associated SPA templates for use by States to modify their Medicaid State plans if they choose to implement these flexibilities. Previously, Medicaid program alternatives could only be implemented through the section 1115 waiver process. Under this process, the end result is the State burden will be reduced significantly.

B. Justification

1. Need and Legal Basis

Section 1901 of the Act (42 U.S.C. 1396) requires that States must establish a State plan for medical assistance that are approved by the Secretary to carry out the purposes of title XIX. These SPAs, if States choose to implement these flexibilities, will require a collection of information to effectuate these changes.

The Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, enacted on February 4, 2009, corrected language in section 6044 (Alternative Benefit Packages) of the DRA as if these amendments were included in the DRA, and subsequently amended section 1937 "State Flexibility for Medicaid Benefit Packages."

Section 611(a)(1)(C) and 611(a)(3) of CHIPRA requires States to assure that children under the age of 21, rather than those under 19 as originally specified in the DRA, who are included in benchmark or benchmark-equivalent plans, have access to full EPSDT services (i.e., those found in 1905(a)(4)(B), 1905(r) and 1902(a)(43) of the Social Security Act). These EPSDT services may be provided through a benchmark or benchmark-equivalent plan or as an additional benefit to those plans under 1937 authority. Section 611(a)(1)(A)(i) changed the "Notwithstanding any other provision of title.." in 1937(a)(1)(A) to "Notwithstanding section 1902(a)(1) (relating to Statewideness), section 1902(a)(10)(B) (relating to comparability) and any other provision of this title which would be directly contrary to the authority under this section." Congress did not specify "transportation" in the new CHIPRA legislation, therefore the general authority under 42 CFR 431.53 and 1902(a)(4) of the Act to assure transportation for Medicaid beneficiaries in order for them to have access to covered State plan services applies, regardless of whether beneficiaries are or are not enrolled in benchmark or benchmark-equivalent plans.

2. Information Users

The State Medicaid agencies will complete the templates. CMS will review the information to determine if the State has met all of the requirements of the DRA provisions the States choose to implement. If the requirements are met, CMS will approve the amendments to the State's Title XIX plan giving the State the authority to implement the flexibilities. For a State to receive Medicaid Title XIX funding, there must be an approved Title XIX State plan.

With respect to section 6043, if a State adopts the provision for cost-sharing for the non-emergency use of an emergency room, a hospital will be required to inform a beneficiary of the cost of the copayment, of the availability of the service at a lesser or nearly no co-pay facility and the hospital will coordinate the referral. Therefore, the hospitals in addition to the State will be subject to the PRA burden.

3. Improved Information Technology

The forms will be available in electronic format. We expect every submission to be forwarded to our agency using the electronic format. The document is completed in a user friendly format.

With respect to section 6043, each State will address the information requirement with its own hospitals.

4. Duplication of Similar Information

There is no duplication of effort on information associated with this collection.

5. Small Businesses

This collection does not impact small businesses.

6. Less Frequent Collection

Once any amendments are approved, there is no need to resubmit additional amendments, unless the State initiates a change. This State plan process is a longstanding process to implement State's Medicaid programs and has been used for years.

In completing these State plan amendments, States are actually reducing the time to implement Medicaid program changes.

7. Special Circumstances

There are no special circumstances or impediments. The model templates are available in electronic format and will be posted on the CMS Internet website.

8. Federal Register Notice/Outside Consultation

A 60-day Federal Register notice was originally published on August 14, 2009. CMS also shared draft versions of all of the templates with the American Public Health Services Association and with all who may be interested in pursuing these State plan flexibilities.

9. Payment/Gift To Respondent

There are no payments of gifts associated with this collection.

10. Confidentiality

There is no personal identifying information collected in the documents. All the information is available to the public.

11. Sensitive Questions

There are no questions of a sensitive nature associated with these forms.

12. Burden Estimate (Total Hours and Wages)

Originally none of the SPA templates were more than 9 pages. There are five SPA templates. In preparation for the E-SPA initiative which will require that States submit all SPAs and supporting materials in electronic version we have further revised these templates. The templates for sections 6083 (State Option to Establish Non-emergency Medical Transportation, 6041, 6042 and 6043 (Alternative Premiums/Cost Sharing Including Premiums and Cost Sharing for Emergency Services and Prescriptions Drugs) and section 6044 (Alternative Benefit Packages) have been expanded to include necessary information or modified to reflect statutory changes that occurred as a result of the CHIPRA legislation. These templates are now longer and represent some additional information collection.

We now estimate that it will take no more than two hours for a State to actually complete and submit each template to CMS. The potential number of respondents is 56 (50 States, D.C., and 5 territories) however, we do not expect all 56 States/territories to respond. We estimate that annually **4** States/territories will submit a totally new SPA to implement one of these flexibilities and once approved, the State/territory will not need to resubmit unless it wishes to modify the State plan. We also estimate that annually **12** States/territories will submit modifications to the State plan to modify these approved flexibilities. For both new and modification SPAs we estimate the annual burden to total **32 hours (4 + 12 = 16 x 2 hours)**. The annual cost is estimated at no more than $1600. (16 states x 2 hrs. x $50 = $1600)

The template implementing section 6043 of the DRA – premiums and cost sharing for emergency services includes a third party disclosure requirement in which hospitals are required to inform beneficiaries after a determination has been made that the individual does not have an emergency medical condition before providing the emergency services that: 1) the hospital may require payment of the State-specified cost sharing before the service can be provided; 2) the hospital will provide the name and location of an alternate non-emergency services provider that is actually available and accessible; 3) an alternate provider can provide the services without the imposition of the State-specified higher cost sharing for the inappropriate use of the emergency room; and 4) the hospital will provide a referral to coordinate the scheduling of this treatment.

This third party disclosure is only available to States that choose the implement a State plan amendment under section 6043 of the DRA. We expect less than 5 States to request to implement this provision annually. Within that estimate, we estimate that **40 hospitals** will be providing the third party disclosure to approximately **4,000 beneficiaries**. This third party disclosure process will take less than **10 minutes**. Total estimated annual burden hours associated with this requirement is **667 hours** (**4,000**

disclosures x 10 min. = 40,000 minutes ÷ 60 = 667 hours). Estimated cost burden is $33,320 annually (667 hours x $50 per hour = $33,320).

13. Capital Costs (Maintenance of Capital Costs)

There are no capital costs.

14. Cost to the Federal Government

CMS estimates that the time needed to review each SPA submittal will be approximately 3 hours. CMS further estimates that two GS-13's (hourly rate of $48.59) will be responsible for reviewing and approving each SPA. The cost to the Federal Government could therefore be $4,664.64 ($48.59 x 6 hours x 4 States=$1166.16) + ($48.59 x 6hrs x12 states =$3498.48) annually.

15. Program or Burden Changes

Slight decrease in burden is due to the decrease in annual submissions by States. States are only required to submit once or occasionally.

16. Publication and Tabulation Dates

There are no plans to publish the information for statistical use.

17. Expiration Date

CMS does not oppose the display of the expiration date.

18. Certification Statement

There are no exceptions to the certification Statement.

C. Collection of Information Employing Statistical Methods

The use of statistical methods does not apply to this form.