

## Supporting Statement For Paperwork Act Submissions

### **A. Background**

Section 304(c) of Public Law 106-554 amended section 1886(d) (3) (E) of the Social Security Act to require CMS to collect data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index, for application beginning October 1, 2004 (the FY 2005 wage index). The purpose of the occupational mix adjustment is to control for the effect of hospitals' employment choices on the wage index. For example, hospitals may choose to employ different combinations of registered nurses, licensed practical nurses, nursing aides, and medical assistants for the purpose of providing nursing care to their patients. The varying labor costs associated with these choices reflect hospital management decisions rather than geographic differences in the costs of labor.

On April 4 and September 19, 2003, respectively, a proposed and final notice appeared in the *Federal Register* (68 FR 16516 and 54905) of CMS's intent to begin collecting occupational mix data from hospitals using the Medicare Wage Index Occupational Mix Survey, Form CMS-10079 (the 2003 survey). In the FY 2005 hospital inpatient prospective payment system final rule (IPPS, 69 FR 49034, August 11, 2004), CMS provided a full discussion of the 2003 survey and the application of the occupational mix adjustment to the FY 2005 wage index. The notice also included a summary of public comments and suggestions for improving the occupational mix survey. Similar comments and suggestions were received for the FY 2006 wage index (70 FR 47365).

On October 14, 2005, a notice appeared in the *Federal Register* (70 FR 60092) announcing CMS's proposed 2006 occupational mix survey, which included modifications intended to address commenters' concerns and suggestions. On February 10, 2006 a notice appeared in the *Federal Register* (71 FR 7047) announcing CMS's final 2006 occupational mix survey. The 2006 survey provided for the collection of hospital-specific wages and hours data, a 6-month prospective reporting period (January 1, 2006 through June 30, 2006). Although the 2006 survey expanded the RN category to include functional subcategories, it significantly reduced the number of discrete occupational categories that hospitals had to report. Data for advance practice nurses were excluded from the survey altogether while 6 fewer general occupational categories are discreetly reported (they are now included in the "all other occupations" category) because they are no longer part of the occupational mix adjustment.

CMS originally planned to apply the results of the 2006 survey beginning with the FY 2008 wage index. However, on April 3, 2006, in Bellevue Hosp. Ctr v.

Leavitt, the Court of Appeals for the Second Circuit (“the Court”) ordered CMS to apply the occupational mix adjustment to 100 percent of the wage index effective for Federal fiscal year (“FY”) 2007. The Court required CMS to “immediately ... collect data that are sufficiently robust to permit full application of the occupational mix adjustment.” The Court also required that all “data collection and measurement and any other preparations necessary for full application should be complete by September 30, 2006, at which time we instruct the agency to immediately apply the adjustment in full.” 2006 WL 851934 at \*13.

To comply with the Court’s order, CMS immediately notified hospitals requiring them to submit occupational mix data for the first 3 months of the 6-month time frame previously announced for the 2006 survey, so that the new survey data could be applied to the FY 2007 wage index. CMS modified the FY 2007 IPPS proposed rule to announce that the occupational mix adjustment would be applied to 100 percent, rather than 10 percent of the FY 2007 wage index, and that the adjustment would be based on results from the new 2006 survey (see 71 FR 26844, May 17, 2006).

CMS received several public comments for the FY 2007 proposed rule requesting refinements of the occupational mix survey instructions and definitions. In calendar year 2008 we revised the occupational mix survey to address the concerns of comments received during the, February 2, 2007, 60-day *Federal Register* notice. The 2007/2008 survey provided for the collection of hospital-specific wages and hours data for a 1-year prospective reporting period (that is, from July 1, 2007 through June 30, 2008), additional clarifications to the survey instructions, the elimination of the RN subcategories, some refinements to the definitions for the occupational categories, and the inclusion of additional cost centers that typically provide nursing services. The 2007/2008 Medicare occupational mix survey is applied beginning with the FY 2010 wage index.

Although CMS did not solicit comments in the IPPS FY 2010 proposed rule (74 FR 24137), we received several public comments with suggestions for improving the next update of the occupational mix survey. Commenters recommended we use calendar year 2010 (that is, January 1, 2010 through December 31, 2010) instead of the 1-year prospective reporting period (July 1, 2007 through June 30, 2008). Commenters believe using calendar year versus the 1-year prospective reporting period will allow hospitals more time to develop their occupational mix data before submitting the data to the Medicare contractors and CMS for use in the FY 2013 wage index. Based on the comments received we are revising the 2007/2008 occupational mix survey to address these concerns. The 2010 survey will provide for the collection of hospital-specific wages and hours data for calendar year 2010 (that is, payroll periods ending between January 1, 2010 and December 31, 2010). The 2010 Medicare occupational mix survey will be applied beginning with the FY 2013 wage index.

**B. Justification**

1. Need and Legal Basis

Section 304(c) of Public Law 106-554 mandates an occupational mix adjustment to the wage index, requiring the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program. The proposed data collection that is included in this submission complies with this statutory requirement.

2. Information Users

Each of the approximately 3,522 IPPS providers participating in the Medicare program will be required to complete the 2010 Medicare Wage Index Occupational Mix Survey. The survey will be forwarded to hospitals through CMS's Medicare contractors and will be made available on CMS's web site.

3. Use of Information Technology

The Medicare contractors will be required to forward the survey, an electronic spreadsheet, to each IPPS provider via email. Once the provider has completed the survey, the provider will transmit the survey back to the Medicare contractors, who in turn will forward the survey to CMS.

4. Duplication of Efforts

There is no duplication of efforts.

5. Small Businesses

The collection of the occupational mix survey will affect the approximately 3,522 IPPS providers participating in the Medicare program. The providers will be required to submit the requested Medicare Wage Index Occupational Mix Survey every three years, as opposed to the submission of the current cost report wage data, which is submitted annually.

6. Less Frequent Collection

Section 304 of Public Law 106-554 requires CMS to collect occupational mix data no less than every three years. Failure to collect this data will result in CMS being in default of this mandate.

7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

A 60-day Federal Register notice was published on September 4, 2009. Eight comments were received.

CMS provided public notifications of the 2003 occupational mix survey in the Federal Register on April 4, 2003 (68 FR 16516), September 19, 2003 (68 FR 54905), May 18, 2004 (69 FR 28252), and August 11, 2004 (69 FR 49034). In response to those notices, CMS received several suggestions for improving the survey, from MedPAC, national and State hospital associations, hospitals, and others. CMS received additional comments and suggestions from the public after stating in the FY 2006 IPPS proposed rule (70 FR 23371, May 4, 2005) the agency's intent to revise the occupational mix survey for future data collections. CMS developed a new 2006 occupational mix survey that included the suggested improvements (70 FR 60092 and 71 FR 7047). In response to the FY 2007 IPPS proposed rule, we received additional comments for improving the survey. Based on public comments, CMS issued the 2007/2008 occupational mix survey to make further improvements to the occupational mix survey. Although CMS did not solicit comments in the IPPS FY 2010 IPPS proposed rule (74 FR 24137), we received several public comments with suggestions for improving the next update of the occupational mix survey.

9. Payments/Gift to Respondents

There are no payments/gifts to respondents.

10. Confidentiality

This collection is public information. CMS does not assure confidentiality.

11. Sensitive Questions

There are no sensitive questions.

12. Burden Estimates (Hours & Wages)

We do not collect survey data for hospitals that become designated as critical access hospitals (CAHs) and for hospitals that terminated participation in the Medicare program. Currently, there are approximately 3,522 short-term and acute care hospitals in the Medicare program.

The occupational mix data for a 1-year collection period will be collected from payroll periods beginning on or after January 1, 2010 and on or before December 31, 2010. We estimate the time associated with collecting the occupational mix

data and submitting the data electronically to intermediaries to be 60 working days (60 days x 8 hours per day= 480 hours). We estimate 1,690,560 total burden hours for the 1-year collection period (that is 3,522 hospitals x 480 hours= 1,690,560). When computed, assuming a current salary of \$25 per hour plus 20 percent for fringe benefits (\$30 per hour x 480 hours per hospital), the estimated cost of burden for the 12-month collection period is \$14,400 per hospital.

13. Capital Costs

We do not expect hospitals to have any capital costs associated with this revised collection effort. The information that hospitals provide should already be available through their existing systems.

14. Cost to Federal Government

The Medicare contractors will be responsible for reviewing the survey, once received from the hospitals.

An auditor (Medicare contractor) review of each hospital's occupational mix survey data for the 1-year collection period should take approximately 5 hours. When computed, 3,522 hospitals x 5 hours fiscal intermediary review per hospital x \$30 per hour plus 20 percent for fringe benefits (Auditor/Financial Analyst average hourly wage (AHW) based on annual salary of \$50,000 [estimated from Occupational Employment Statistics survey]), the Federal cost is approximately \$633,960.

15. Changes to Burden

We do not require the occupational mix survey data to be completed by hospitals that have become designated as CAHs or hospitals that have terminated participation in the Medicare program. For the 2007/2008 occupational mix survey, we estimated that 3,600 hospitals would need to complete the survey based on the wage information that we collected at that time for the annual IPPS update. Currently, there are approximately 3,522 short-term and acute care hospitals participating in the Medicare program. We based this estimate on the number of hospitals that submitted wage index information for the FY 2010 IPPS rule.

The 2010 survey will provide for the collection of hospital-specific wages and hours data for a 1-year reporting period (that is, payroll periods ending between January 1, 2010 and December 31, 2010). The estimated burden hours for the 2010 Occupational Mix survey associated with a 1-year collection period will decrease from 1,728,000 hours to 1,690,560 hours because we estimate fewer hospitals will be required to submit the occupational mix survey. **[For more details, please refer to the Medicare Wage Index Occupational Mix Survey-Summary of Changes.]**

16. Publication/Tabulation Dates

The information provided by the survey will be made public through the CMS public use file website and the proposed and final rules in the Federal Register for fiscal year FY 2010.

17. Expiration Date

CMS would like an exemption from displaying the expiration date as these forms are used on a continuing basis. To include an expiration date would result in having to discard a potentially large number of forms.

18. Certification Statement

There are no exceptions to the certification statement.

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

There are no statistical methods.