

## **Supporting Statement Civil Rights Information Request Form**

### **Background**

On October 31, 2007, OMB approved a Civil Rights Information Request Form used by the Office for Civil Rights (OCR) in the U.S. Department of Health and Human Services (HHS). The form is designed to collect data from health care providers who have requested certification to participate in the Medicare Part A program. (See OMB Number: 0990-0243; Expiration Date: 10/31/2010). This civil rights compliance determination is an essential component of HHS' decision to grant or deny Medicare Part A certification and must be made prior to the Department's final notification of its decision to the provider.

OCR is now requesting approval on a reinstatement with change for an information request form that is very similar to that submitted and approved in 2007. There were no substantive changes made in this Civil Rights Information Request Form. However, 2 technical changes were made to make the form easier to read and understand. First, in the Civil Rights Information Request for Medicare Certification Form, there are now nine documents to be submitted instead of eleven because question 5 was folded into question 3 and questions 9 and 10 have been combined into a new question 8. Second, web links have been included for the regulatory requirements and sample policies.

The form still requests information necessary to determine whether a health care provider seeking Medicare Part A certification is in compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. Specifically, the form requests information based on the provider's nondiscrimination policies and procedures on the basis of race, color, national origin, disability, and age.

### **A. Justification**

#### **1. Circumstances Making the Collection of Information Necessary**

The Centers for Medicare and Medicaid Services (CMS) require health care providers to meet certain legal requirements in order to participate in the Medicare Part A program established by Title XVIII of the Social Security Act. Those legal requirements include ensuring that health care providers receiving Federal financial assistance from the Department of Health and Human Services do not deny benefits or services to qualified persons based on race, color, national origin, disability, or age. OCR conducts reviews of such providers to determine compliance with the requirements of the following statutes and regulations:

- Title VI of the Civil Rights Act of 1964 (Title VI) Pub.L. 88-352, 42 U.S.C. Section 2000d-1 et seq., and its implementing regulation, Title 45 Code of Federal Regulations (CFR) Part 80, which prohibit discrimination on the grounds of race, color, or national origin by recipients of Federal financial assistance. This encompasses the requirement for recipients to take reasonable steps to provide

meaningful access to persons who are limited English proficient (LEP). See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311 (2003).

- Section 504 of the Rehabilitation Act of 1973 (Section 504), Pub.L. 93-112, as amended by Pub. L. 93-516, 29 U.S.C. Section 794, and its implementing regulation, Title 45 CFR Part 84, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. This encompasses the requirement for recipients to provide auxiliary aids and services to persons with disabilities.
- Age Discrimination Act of 1975, Pub. L. 94-135, 42 U.S.C. Section 6101 et seq., and its implementing regulation, Title 45 CFR Part 91, which prohibit discrimination on the basis of age by recipients of Federal financial assistance.

## 2. **Purpose and Use of Information Collection**

To ensure adherence to the statutory requirements listed above, compliance reviews are requested when health care providers, such as hospitals, nursing homes and home health agencies, apply to participate in the Medicare Part A program. When a provider seeks Medicare certification, OCR conducts a compliance review to determine whether the provider will be able to comply with Title VI, Section 504, and the Age Discrimination Act. Such reviews are an effective means of working with health care providers because potential civil rights concerns can be identified prior to receipt of Federal financial assistance. The technical assistance available to recipients on the OCR website helps providers take steps to comply with their obligations to refrain from prohibited discrimination.

This approach is efficient and practical because it promotes voluntary compliance, while decreasing the need for more in-depth Federal complaint investigations and compliance reviews that impose greater costs, both on the recipient and on OCR.

The information received from the facility provides OCR with a basic understanding of how the program is administered. OCR conducts an analysis addressing the following requirements:

Assurance of Compliance. 45 CFR 80.4(a), 45 CFR 84.5 and (45 CFR 91.33 require that an assurance of compliance (Form HHS-690) be submitted, which state that the facility will comply with all the requirements of the aforementioned statutes and their implementing regulations.

Policies of Nondiscrimination. 45 CFR 80.6(d), 45 CFR 84.8, and 45 CFR 91.32 require that the facility have a written policy of nondiscrimination on the basis of race, color, national origin, disability and age. Because the regulations requiring dissemination of such policies vary according to the particular regulatory authority, the provider is referred to a link to the specific regulations, and provided with a sample Nondiscrimination Policy.

Language Assistance. 45 CFR 80.3(b)(2) prohibits the provider from utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin. This encompasses the requirement for recipients to take reasonable steps to provide meaningful access to persons who are limited English proficient (LEP). See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311 (2003). The guidance recommends that facilities, in describing the language assistance measures to be used to ensure effective communication between providers and LEP persons, review the number of LEP persons in its service area, the frequency of contact with LEP persons, the nature of services provided and the costs and resources available to the facility. It further explains that these factors should be considered for both oral and written communication with LEP persons. The provider is provided with a sample Policy for Communication with Persons with Limited English Proficiency.

Auxiliary Aids. 45 CFR 84.52(d) requires the facility to provide auxiliary aids to persons with impaired sensory, manual or speaking skills, where necessary to provide such persons an equal opportunity to benefit from the service in question. The provider is provided with a sample Policy for Auxiliary Aids and Services for Persons with Disabilities, and a sample Section 504 Notice of Program Accessibility.

Section 504 Data. 45 CFR 84.7 requires facilities that employ 15 or more persons to designate a responsible employee to coordinate compliance with the Section 504 regulation; further the facility must provide a copy of its grievance procedure for handling disability discrimination grievances. The provider is provided with a sample Section 504 Grievance Procedure.

Age Distinctions. 45 CFR 91.31 requires the facility's policies and practices to be free from restrictions of services based on age, and an explanation must be provided concerning any exceptions/exemptions that may apply.

The benefits of the civil rights compliance review investigation process include:

- o Increased recipient awareness and cooperation - The compliance review enables recipients to establish appropriate policies and procedures or correct potential noncompliance in a voluntary context. Because of the self-corrective and direct technical assistance nature of the compliance review, OCR's experience has been that recipients are generally cooperative and view the activity as an informative and positive step that can help them avoid potential civil rights compliance concerns in the future.

Working with Medicare providers during a compliance review, OCR can develop on-going relationships that can have residual positive results in service delivery and marketing among other business groups. For example, once recipient agencies have contacted and worked cooperatively with groups representing persons with disabilities, the

agencies are more likely to seek help from these groups if subsequently they need assistance in resolving compliance problems. This cooperative working relationship can enhance compliance and forestall formal complaints to OCR.

- o Reduced Provider Burden- In conducting a complaint investigation or compliance review of a health care or social service provider, OCR determines whether a compliance review was performed by OCR. In many instances, the procedure decreases the burden on the recipient since the compliance review and corrective actions, as necessary, may reduce or eliminate the need for a formal investigation involving interviews, examination of records, collection and submission of data associated with issues already addressed through a recent compliance review certification process.

To further reduce provider burden in completing the compliance review process, OCR has developed several Corporate Agreements with health care corporations. These Agreements are designed to expedite the civil rights compliance review process by implementing a practice whereby all of a corporation's national policies and procedures are reviewed and approved at OCR's headquarters' level. Subsequent to such approval, only local facility-specific information is reviewed by OCR for civil rights compliance during the review process.

### **3. Use of Improved Information Technology and Burden Reduction**

OCR currently provides a website

[http://www.hhs.gov/ocr/civilrights/resources/providers/medicare\\_providers/index.html](http://www.hhs.gov/ocr/civilrights/resources/providers/medicare_providers/index.html) that allows covered entities immediate access to the civil rights information request package and technical assistance material. Providing ready access to technical assistance to recipients in completing the compliance review has served to both encourage compliance and avoid circumstances in which providers deploy measures that might be less effective and more costly than necessary to achieve compliance.

### **4. Efforts to Identify Duplication and Use of Similar Information**

The information requested is not otherwise available. Title VI, Section 504, and the Age Discrimination Act do not otherwise require generation or production of nondiscrimination policies and procedures on the basis of race, color, national origin, disability and age for submission to any other Federal entity or authority.

### **5. Impact on Small Businesses or other Small Entities**

The civil rights compliance review imposes a lesser burden on small providers than on larger HHS recipients, since generally, the smaller the provider and the fewer services provided, the narrower the scope of inquiry will be in conducting a compliance review.

## **6. Consequence of Not Collecting the Information or of Collecting the Information Less Frequently**

If the compliance review collection of relevant information is not conducted, OCR cannot ensure that a Medicare Part A provider facility will be in compliance with applicable HHS nondiscrimination statutes and regulations. As described above, a compliance review results in increased recipient awareness and cooperation and reduces or potentially may eliminate the need for a formal investigation, thus reducing the potential provider burden that may result if OCR has to conduct a complaint investigation or compliance review. This is a single time request of the healthcare providers (when they apply for Medicare Part A certification or re-certification), for record keeping.

## **7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5**

None

### **Recordkeeping Requirements**

Records produced in conjunction with the data request, such as a provider's Assurance of Compliance (Form 690), non-discrimination and other civil rights policy statements, Section 504 Grievance Procedure, and procedures for effective communication with persons of limited-English proficiency, are usually items only 1-3 pages in length and are maintained in the normal course of business.

## **8. Comments in Response to the Federal Register Notice/ Outside Consultation**

For Federal Register Notice information, see the OS Certification Form.

In preparing the original 2000 compliance data request form, OCR consulted with Department of Labor officials concerning a pre-inquiry activity their agency conducts which is similar to the OCR compliance review process. DOL's input was very helpful in deliberations about the administration of OCR's pre-grant review program.

In addition, OCR consulted with several health care provider organizations at corporate and local levels in preparing the 2007 and 2010 civil rights compliance data request forms. The purpose of the consultation was to obtain their direct input on burden estimates to respond to our pre-grant data request. In 2010 the only comments we received were those that made specific mention that the Civil Rights Corporate Agreements for processing the reviews were helpful with expediting the civil rights process immensely. HHS has entered into a total of 31 Civil Rights Corporate Agreements with major health care corporations nationwide. In a Civil Rights Corporate Agreements, the corporation commits that all of its health care facilities will adapt and implement model civil rights policies and procedures that had been jointly developed and approved by OCR and the corporation.

In preparing the 2000 pre-grant data request form, OCR also consulted with Johns Hopkins University, Florida Developmental Disabilities Association, Arizona Developmental Disabilities Association, the Office of the Mayor of New York City, the Commonwealth of Virginia and many other institutions, organizations and agencies representing persons with disabilities. In addition, in preparing this revision, OCR has been able to rely on ongoing consultation and technical assistance opportunities with potential recipients.

#### 9. Explanation of any Payment/Gift to Respondents

There is no payment/gift to respondents.

#### 10. Assurance of Confidentiality Provided to Respondents

There is no request for any confidential or private information regarding patients or any specific individual. The form only requests information regarding healthcare providers' policies and procedures for ensuring equal access to their services.

#### 11. Justification for Sensitive Questions

There are no sensitive questions. There is no request for any confidential or private information regarding patients or any specific individual. The form only requests information regarding healthcare providers' policies and procedures for ensuring equal access to their services.

#### 12. Estimates of Annualized Hour and Cost Burden

Type of Respondent	No. of Respondents	No. Responses Per Respondent	Average Burden per Response (in hours)	Total Burden Hours
Health care providers	2900	1	8	23,200

Recipients subject to compliance reviews vary greatly in size, and many provide specialized or limited health services. The complexity of the compliance review and the amount of time needed for completion is greater for those facilities providing a wider range of services.

We estimate that it would take an average of 8 hours per respondent to complete the data request with a range of 4 hours to 15 hours, largely dependent on the size of the facility and the types of services provided. This estimate is based on empirical data. Based on discussions with the respondents and on our experiences in conducting other regulatory data requests, OCR's regional staff was able to provide a range of hours that it takes to complete the data request. In FY 2010, OCR reviewed and cleared 1,859 healthcare providers as part of the civil rights clearance process for Medicare participation. Of those cases, 1,333 were closed with corrective action (meaning that the respondents had to make changes to their

policies and procedures). For the respondents who achieved corrective action, OCR staff generally surveyed each respondent to get an estimate of the number of hours it took for them to complete the civil rights clearance process. Additionally, OCR also surveyed the respondents regarding the use of sample policies and were assured that the sample policies would reduce the amount of work and time significantly. . An average of the range of hours based on the mix of respondents was computed to arrive at the average estimate of hours per respondent.

During the last ten years, the number of compliance reviews has varied, ranging from 2,200 to 3,800 per year. Based on our experience of the past five years, OCR projects that it will process a total workload of approximately 2, 900 compliance reviews each year for the next three fiscal years. We are requesting a three year approval for this activity, and the following annual information for new recipients is based on flat projections for FY 2011-FY 2014:

### **Estimated Annualized Burden Cost**

<b>Type of Respondent</b>	<b>Total Burden Hours</b>	<b>Hourly Wage Rate</b>	<b>Total Respondent Costs</b>
Health care providers	23,200	\$47.00	\$1,090,400

The total respondent costs of \$1,090,400 (for 2900 health care providers) is calculated based on the average salaries of three categories of health care workers (i.e., medical and health services managers, registered nurses, and all other health professionals, para-professionals and technicians). These categories are representative of those who would be responding to the data request. The salaries were taken from the Bureau of Labor Statistics (BLS) Occupational Employment Statistics for 2008 and adjusted for inflation. Using the average of salaries for these three categories of workers, both benefits and overhead costs were added based on the Office for Civil Rights' (OCR) own budget experience. The hourly cost to health care providers, therefore, is based on salaries adjusted for inflation plus benefits and overhead charges. This is the same cost allocation method that OCR has used to estimate the government cost of this collection.

### **13. Estimates of other Total Annual Cost Burden to Respondents or Record Keepers/Capital Costs**

There is no start up cost.

### **14. Annualized Cost to Federal Government**

The government annualized cost estimate of \$1,280,000 is based on the proportion of the Office for Civil Rights' (OCR) compliance staff time estimated as being allocated to

compliance reviews for work during FY 2010. This means that, given the annual workload of 2,900 compliance reviews of health care providers, the estimated government average cost of one review of one health care provider is \$441.37. The allocation of investigative time is based on the relative number of hours required to complete each type of OCR compliance activity (e.g., complaints, post-grant reviews, outreach and compliance reviews). OCR's budget estimates that just over 4 percent of compliance staff time is allocated to compliance reviews. Based on the salaries and benefits for compliance staff and OCR's associated overhead, OCR has estimated the total funds allocated to conduct compliance reviews.



**15. Explanation for Program Changes or Adjustments**

This collection is an adjustment change for two reasons: (1) the average burden hours per health care provider has been reduced from 15 to 8 because of the addition of web links to the regulatory requirements and sample policies; and, (2) because our estimate of the number of respondents is lower than in our 2007 request. The average burden has been reduced not only because of the web links, but also because OCR developed new sample civil rights policies and attached them to the data request form by way of web links. There are now 9 documents that respondents are required to submit, and OCR developed sample policies for the five longest and most complicated policies. Thus respondents no longer have to create their own. The 4 additional documents require minimal work on the part of the respondents. The web links take the respondent directly to the regulatory requirements as well as to the sample policies/procedures. Therefore, the availability of the new sample policies and the easy access to them will save the respondents much time in preparing their documents for civil rights clearance.

**16. Plans for Tabulation and Publication and Project Time Schedule**

There is no project time schedule.

**17. Reason(s) Display of OMB Expiration Date is Inappropriate**

It is appropriate to display the OMB expiration date

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

There are no exceptions to certification for Paperwork Reduction Act submissions.

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

The civil rights compliance review described above in part A does not require nor lend itself to the application of statistical methods.

**ATTACHMENTS**

- A. Civil Rights Information Request for Medicare Certification Form
- B. Assurance of Compliance (HHS/690)
- C. Technical Assistance
- D. Sample Policies

