Comments and Responses on the CMS-855O, OMB: XXXX-XXXX

Comments related to the proposed changes (DATA Collection)

Comment: A commenter suggested including oral surgeons on the list of eligible applicants in the General Instructions.

Response: CMS concurs and has added oral surgeons to the list of eligible applicants in the General Instructions.

Comment: One commenter suggested to include the following specialties in section 2D: Cardiac Electrophysiology, Hospice, Palliative Care, Ophthalmology, Geriatric Psychiatry, Sports Medicine and Osteopathic Manipulative Medicine (revised from Osteopathic Manipulative Therapy).

Response: CMS concurs and has added the specialties as requested.

Comment: Two commenters recommended that CMS delete the reference to the Medicare Identification Number in items 4 and 5 (under Exclusions, Revocation, or Suspension), on page 6 since providers and suppliers submit claims using a National Provider Identifier (NPI), not a Medicare Identification Number.

Response: While it is true that providers and suppliers submit claims via the NPI, the Medicare identification number still serves as an identifier of the provider or supplier. As such, CMS are not inclined to adopt the commenter's suggestion at this time.

Comment: Two commenters suggested that CMS delete the word "Convictions" from the title found in Section 3 of the CMS-855O. Since a conviction is only one type of Final Adverse Action, the word conviction should be removed from the title of section 3.

Response: Since a substantial number of the adverse actions listed in section 3 involve criminal convictions, CMS believes it is appropriate to include the term "conviction" in the heading to section 3.

Comment: Two commenters suggested that CMS make the "Final Adverse Legal Action" and "Final Adverse Legal Action History" language consistent across all CMS 855 applications.

Response: CMS agrees with the need for language consistency, and as such, has revised section 3 of the CMS 855O to use the phrase "Final Adverse Legal Actions" and "Final Adverse Legal Action History."

Comment: Two commenters suggested that CMS revise the paperwork burden estimate from one (1) hour to two (2) hours for the CMS-855O. Since the CMS-855I has a burden estimate of four (4) hours and the CMS-855O has 13 pages and the CMS-855I has 27 pages, it seems that the paperwork burden associated with the CMS-855O should be at least two (2) hours.

Response: CMS disagrees with this suggestion. The number of pages in the application is not necessarily dispositive of the burden involved. We believe that our estimate of 1 hour is appropriate and accurate.

Comment: One commenter noted the specialties of "hospice" and "palliative care" are missing from the specialty options in the CMS 855O.

Response: CMS has added "hospice" and "palliative care" to section 2D of the CMS 855O.

Comment: One commenter suggested changing the language of "place of birth" to clarify if the intent is City, State, and/or Country of Birth.

Response: CMS has clarified the Place of Birth requires State data in sections 2 and section 6 of the CMS 855I, section 6 of the CMS 855B, section 6 and Attachment 2 of the CMS 855A, section 2 of the CMS 855O and section 6 of the CMS 855S. Country of Birth is required in section 2 of both the CMS 855I and the CMS 855O.

Comments that are Out-of-Scope for these proposed changes (DATA Collection)

Comment: One commenter questioned if an ordering and referring physician or non-physician practitioner must enroll with more than one Medicare contractor if the ordering and referring physician or non-physician practitioner is located in more than one payment locality.

Response: Ordering and referring physician and non-physician practitioners need only to enroll once regardless of location.

Comment: One commenter noted that contractors are processing the change, add and delete boxes inconsistently stating that some contractors require that these boxes be used only in situations where the provider/supplier is changing their information, while others are requiring that dates be included in these boxes when completing other reasons for application, specifically new enrollee applications and suggests additional contractor education be done in that area for consistency.

Response: CMS concurs with this suggestion. CMS will conduct appropriate contractor education and instructions.

Comment: Two commenters requested that CMS clarify that physicians and non-physician practitioners submit their type 1 National Provider Identifier (NPI) on page 2 and 3 of the CMS-855O.

Response: CMS believes that physicians and non-physician practitioners are already aware that they must use their Type 1 NPI when enrolling as individuals.

Comment: One commenter suggested giving detailed instruction regarding how an ordering and referring physician or non-physician practitioner would change his/her enrollment status to that of a Medicare provider or supplier with the ability to submit claims.

Response: CMS will consider this suggestion for a future revision of these forms.

Comment: Two commenters suggested that CMS delete items 2 and 3 – and revise items 4 and 5 to delete the term "misdemeanor" - under "Convictions" from page 6, since CMS does not have statutory or regulatory authority to deny or revoke Medicare billing privileges based on a misdemeanor conviction.

Response: CMS declines to accept this suggestion, as the Office of Inspector General has the authority under section 1128 of the Act to exclude a person or entity from the Medicare program based on certain health care-related misdemeanors.

Comment: Two commenters recommended that CMS revise item 1 under "Convictions" on page 6 to delete the phrase, "that CMS has to be detrimental to the best interest of the program and its beneficiaries." They argued that since CMS must make a qualitative judgment regarding whether a physician or non-physician practitioner felony conviction is detrimental to the best interest of the Medicare program, a physician or non-physician practitioner should report all felony convictions.

Response: CMS believes since 42 CFR 424.530(a)(3) and 42 CFR 424.535(a)(3) use the "detrimental to the best interest" language in conjunction with felony convictions, we believe that it is appropriate to use it in item 1 as well.

Comment: Two commenters urged CMS to replace the term, "Medicare law" with "Social Security Act (Act)" on page 11 (Certification Statement). Statutory provisions regarding Medicare are found in the Social Security Act.

Response: As the Social Security Act contains many other statutory provisions besides those that pertain to Medicare, CMS believes that the term "Medicare law" – which refers to Title XVIII of the Social Security Act – more accurately articulates the provisions that require the signatory's compliance.

Comment: Two commenters suggested that CMS delete the words, “will not knowingly present” in item 6 on page 11 (Certification Statement), since the physician is only ordering or referring the service. Thus, the revised item 6 would read, “I will not cause to be presented a false or fraudulent claim for payment by Medicare.”

Response: CMS will consider this change in a future update to the CMS-855O.

Comment: Two commenters suggested that CMS remove item 3 from section 5 of the CMS-855O because non-enrolled physicians and non-physician practitioners do not have a statutory or regulatory responsibility to report changes to CMS or its contractor.

Response: CMS believes that this certification is important so that CMS has accurate and current information about the ordering and referring physician or practitioner.

Comment: Two commenters suggested that CMS add Section 1866 of the Social Security Act to the first paragraph found on page 13 of the CMS-855O. They contended that on page 13 of the CMS-855O, CMS does not include Section 1866(j)(1)(C) of Social Security Act in the Privacy Act Statement, but contains this statutory citation in the “Supporting Statement for Paperwork Reduction Act Submission.”

Response: CMS will consider this change in a future update to the CMS-855O.

Comment: Two commenters suggested that CMS review and consider removing the references to Section 1842(r) and section 1842(u) of Social Security Act, as these citations may no longer be relevant. They suggested that if CMS adopts this change, CMS should update the Privacy Statement found in the CMS-855O.

Response: As stated above, CMS included – and chooses to retain - these citations so as to give the reader a broader understanding of the provider enrollment process and the various statutes that impact it.

Comment: Two commenters suggested that CMS remove the sentence that states, “Privileged or confidential commercial or financial information is protected from public disclosure by Federal law 5 U.S.C. 522(b)(4) and Executive Order 12600,” since this information collection does not have privileged or confidential commercial or financial information.

Response: The above-quoted sentence, found in section 10 of the Supporting Statement, is standard verbiage designed to alert the reader of the protections afforded by 5 U.S.C. 522(b)(4) and Executive Order 12600. CMS believes it is appropriate to include it in this submission.

Comment: Two commenters suggested that CMS add a new Certification Statement on page 11 that states, “I further certify that I signature below is mine and that I have not authorized another individual to sign this application on my behalf. I further understand and certify that if I do not sign this

application that CMS will return this application to me." This change would reduce the likelihood of office staff signing the enrollment application on behalf a physician or non-physician practitioner.

Response: CMS will consider this suggestion for a future revision of this form.

Comments that are Out-of-Scope for these proposed changes (Instructions)

Comment: Two commenters suggested that CMS revise the sentence under D1 on page 5 of the CMS-855O to remove the reference "all Federal" in the sentence, "A physician must meet all Federal and State requirements for the type of specialty(s) checked." There are no Federal requirements for physician licensure or specialty designation.

Response: Our use of the term "federal" in this context refers to the need to meet the application Federal statutory and regulatory requirements. It is not meant to imply that physician licenses are federally based.

Comment: Two commenters suggested that CMS revise page 6 (item 1 under Convictions) of the CMS-855O from "The provider, supplier, or owner of the provider or supplier…" to state, "The physician or non-physician practitioner was…" They contended that since the CMS-855 only applies to physicians and non-physician practitioners, the form as written is incorrect.

Response: CMS agrees with this comment and will make the change.

Comments Directed at the Supporting Statement

Comment: Two commenters recommended that CMS remove the phrase "the identity of the owners of the enrolling entity" from section A (Background) of the CMS-855O Supporting Statement, as this document does not include information about owners.

Response: The phrase "the identity of the owners of the enrolling entity" was used to describe the provider enrollment process as a whole.

Comment: Two commenters urged CMS to remove the Social Security Act citations regarding Advanced Diagnostic Imaging Services, Independent Diagnostic Testing Facilities, PPACA, Accreditation, the Tax Increase Prevention and Reconciliation Act of 2005, as well as Section 31001(I) of the Debt Collection Improvement Act of 1996 (DCIA) and IRS section 501(C) in the supporting statement for the CMS-855O, since these statutory citations are not relevant to this proposed information collection.

Response: CMS included – and chooses to retain - these citations so as to give the reader a broader understanding of the provider enrollment process and the various statutes that impact it.

Comment: Two commenters suggested that CMS remove the reference to OMB approval number (0938-0685) from section 1 in the supporting statement for the CMS-855O, since OMB has not approved this new information collection and CMS is requesting a new OMB approval number for this proposed information collection.

Response: The inclusion of OMB approval number (0938-0685) was merely designed as a reference to the family of CMS-855 enrollment forms of which the CMS-855O will be part of, albeit under a different number.

Comment: Two commenters suggested that CMS correct item 4 (Duplication and Similar Information) of the justification section found in "Supporting Statement for Paperwork Reduction Act Submission." CMS stated that there is no duplicative information instrument or process. The commenters did not believe this was correct, contending that the CMS-855I contains the same information found on this proposed information collection (e.g., CMS-855O).

Response: In our Supporting Statement, CMS used the phrase "no duplicative information instrument or process" in the sense that there is no other form besides the CMS-855O that is used for the *exclusive purpose* of enrolling physicians and non-physicians solely to order and refer services.   The CMS-855I, on the other hand, is also used to enroll physicians and non-physicians who wish to bill Medicare.

Comments that are the "Opinion" of the Commenter

Comment: Two commenters recommended that CMS withdraw the CMS-855O proposed information collection, begin a new 60-day public comment period, and exclude these changes from any updates to Internet-based Provider Enrollment, Chain and Ownership System (PECOS) until OMB approves a subsequent information collection. They brought forth several arguments. First, they stated that CMS does not have the statutory or regulatory authority to create an information collection that allows a physician or non-physician practitioner to enroll in the Medicare program for a purpose other than receiving Medicare billing privileges; accordingly, infrequent billers should complete the CMS-855I. Second, CMS incorrectly stated in the May 20, 2011 Federal Register Notice that "The ordering and referring field of the CMS1500 claims submission form requires an ordering or referring physician to have a Medicare Identification Number." The commenters stated that the National Provider Identifier (NPI), not a Medicare Identification Number, of an eligible physician or non-physician practitioner should be in the ordering and referring field.   Third, CMS incorrectly stated in the May 20, 2011 Notice that a Medicare Administrative Contractor (MAC) automatically rejects a service furnished by a physician that does not participate in the Medicare program. To date, the commenters argued, CMS has not implemented a process whereby a MAC automatically rejects a claim from a physician that is not enrolled in the Medicare program. Fourth, CMS violated the PRA by modifying the CMS-855I and allowing physicians to submit a modified CMS-855I for the sole purpose of ordering and referring.

Fifth, CMS did not modify the PECOS Systems of Records (09-70-0532), which was published in the Federal Register on October 13, 2006, to include this new proposed information collection. Sixth, CMS did not include the use of Internet-based PECOS by physicians and non-physician practitioners in the CMS-855O paperwork burden estimates.

Response: The implementation of section 6405 of the Affordable Care Act allows CMS to enroll certain physicians and non-physician practitioners in the Medicare program for the sole purpose of ordering or referring items or services for Medicare beneficiaries. As “infrequent billers” are submitting claims for payment to the Medicare Administrative Contractors, as opposed to ordering or referring items or services, we agree with the commenter. Physician and non-physician practitioners who submit claims for payment, regardless of frequency, must complete the CMS 855I. CMS agrees with the commenters’ second and third assertions and have corrected the language in the Supporting Statement. However, neither of these arguments establishes a sufficient basis for withdrawing the proposed information collection. We note that this collection is designed to reduce practitioner burden by creating a special, abbreviated form to allow physicians and non-physicians to enroll in Medicare for the sole purpose of ordering and referring services, in lieu of requiring these individuals to navigate through the much lengthier CMS-855I application and complete various sections therein since practitioners who use this form are those who do not customarily receive direct Medicare payment and these practitioners will not be granted billing privileges. This will, we believe, facilitate a smoother, easier enrollment process for such persons. Changes to PECOS will be implemented as soon as this information collection receives formal approval. Prior to the OMB approval of this form, CMS issued instructions on how to complete the applicable sections on the CMS 855I when being submitted for ordering and referring. CMS notes that the CMS 855I application was not modified in any way.