

SUBJECT: Request for Emergency Clearance of the Paperwork Reduction Act Package for Medicare Fee-for-Service Early Review of Medical Records

Emergency Justification

The Centers for Medicare & Medicaid Services (CMS) is requesting that a Paperwork Reduction Act (PRA) package for *Medicare Fee-for-Service Early Review of Medical Records* to be processed under the emergency clearance process associated with 5CFR 1320.13(a)(2)(i). Public harm is reasonably likely to ensue if the normal clearance procedures are followed. The approval of this data collection process is essential to ensuring that Medicare claims are paid properly, thus preventing improper payments. In absence of this change, a significant number of claims will not be reviewed to ensure compliance with §1862(a)(1)(A) of the Act which provides that Medicare may only make payment for services which are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. If Medicare is required to stop performing this type of review then it will severely impede the ability to ensure that the services provided were reasonable and necessary.

Background

CMS performs medical utilization review and/or fraud review activities in order to mitigate vulnerabilities. In order to adequately discharge their obligations under §1893 of the Social Security Act, CMS through the Medicare contractors perform manual review of claims where program vulnerabilities are present. When data analysis indicates aberrant or unusual billing patterns or potential fraud, the contractor requests clinical and other documents to support the need for the items or services provided by providers or suppliers who submitted claims for payment under the Medicare program. Based on the supporting documentation they receive as part of their reviews, contractors can more accurately review submitted claims. This underlying medical documentation provides a more comprehensive clinical picture to support whether an item or service is covered (has a benefit category, is not statutory excluded, is reasonable and necessary), properly coded and complies with documentation rules, that a manual review of the information presented on the face of the claim does not always allow.

CMS' Medicare contracting authority has been in place since the inception of the Medicare program in 1965. Section 1874 of the Social Security Act (the Act) authorizes the Secretary to perform Medicare program functions directly or by contract. On August 21, 1996, the Congress enacted the Health Insurance Portability and Accountability Act of 1996 (HIPPA). Section 202 of the HIPPA added section 1893 to the Act to establish the Medicare Integrity Program and to allow CMS to contract with eligible entities to perform program integrity activities. These activities include medical, fraud, and utilization reviews and cost report audits of Medicare claims. On December 8, 2003 the Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Section 934 of the MMA amended section 1874A of the Act by adding a new subsection regarding random prepayment medical review and non-random prepayment complex medical reviews. In order to have section 934 implemented in a

final regulation, CMS had to have a PRA package approved. The PRA package was approved on September 15, 2005. The final regulation associated with the PRA package (CMS-6022-F) was finalized and released on September 26, 2008. On March 23, 2010, the Congress enacted the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (HCERA), Section 1302 of the HCERA repealed section 1874A(h) of the Act. The PRA package was not renewed. However, we are now seeking OMB approval for a new collection.

Timeline

November 21, 2011

- Submit PRA package to OSORA

December 5, 2011

- Target display date for the Emergency FR notice
- Start of 10-day public comment period
- PRA package submitted to OMB
- Start of informal OMB review period

December 15, 2011

- End of 10-day public comment period

December 15, 2011

- Start of formal OMB review period.

December 19, 2011

- Requested OMB approval date.