

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

Section 609(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), requires group health plans to provide benefits pursuant to a “qualified medical child support order” (QMCSO). To help determine whether an order for support is a QMCSO, Congress enacted section 401 of the Child Support Performance and Incentive Act of 1998 (CSPIA). Section 401 of the CSPIA amended ERISA and the Social Security Act (SSA), and imposed new requirements on both administrators of group health plans (Plan Administrators), and the State agencies that enforce the programs under the Child Support Enforcement Program (Title IV-D of the SSA), which is administered by the Federal Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services (HHS).

Pursuant to Section 401(a) of the CSPIA, the Department of Labor (the Department) and HHS jointly promulgated the National Medical Support Notice Final Rule on December 27, 2000 (65 FR 82128) (NMSN Regulation). The NMSN Regulation simplifies the issuance and processing of medical child support orders; standardizes communication between state agencies, employers, and Plan Administrators; and creates a uniform and streamlined process for enforcement of medical child support to ensure that all eligible children receive the health care coverage to which they are entitled.

The NMSN Regulation, codified at 29 CFR 2590.609-2, includes a model National Medical Support Notice (NMSN) that is comprised of two parts: Part A is a notice from the state agency to the employer, entitled: “Notice to Withhold for Health Care Coverage;” and Part B is a notice from the employer to the Plan Administrator, entitled: “Medical Support Notice to Plan Administrator.” Both Parts have detailed instructions informing the recipient to whom responses are due depending on varying circumstances. This ICR addresses the Plan Administrator’s responsibilities under NMSN Regulation to complete Part B of the NMSN, the “Plan Administrator Response,” pursuant to the CSPIA and section 609(a)(5)(C) of Title I of ERISA.

HHS and DOL plan to revise the NMSN Parts A and B by October 2012, with minor changes. The revision will synchronize the agencies’ expiration dates and make conforming changes to page one of the NMSN Part B to match the changes made to Part A by HHS in 2011. The Department does not expect that these minor, clarifying changes the information collection will increase the hour or cost burden report in Items 12 and 13 below.

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2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

State agencies issue the NMSN as a means of enforcing the health care coverage provisions in a child support order. The NMSN is a third-party disclosure that affects group health plans, employers who sponsor the group health plans, participants or employees who could be participants in the plans, children of such participants or employees (and, indirectly, their parent or guardian who is not the participant or employee), and state agencies that administer child support enforcement programs.

The “Plan Administrator Response” in Part B of the NMSN requires the Plan Administrator to provide information verifying whether the child is or will be receiving health care coverage from the group health plan. If enrollment has already occurred or can begin immediately, the Plan Administrator’s response in Part B serves as notice to the state agency, the participant (parent), the child (or their non-participant parent or guardian) and the employer that the child is or will begin receiving dependent health care coverage pursuant to the group health plan. When the child is eligible for more than one coverage option, the Administrator must first send the Part B response to the state agency so that the agency may choose one option. The Plan Administrator must also use the Part B response to notify all of the above-affected persons of any waiting period before enrollment of the child can occur.

When appropriate, the Plan Administrator must indicate on the form why the NMSN is not a QMCSO, and notify all of the above-affected parties, except the employer, of the reasons for the determination. Because the regulation specifies that the NMSN is deemed a “Medical Child Support Order,” the Plan Administrator is limited to a finding of “not qualified” due to any one of the following: the notice lacks identification of the child or participant; unavailability of the employee or participant, or of their mailing address; or that a child named in the NMSN is over the age for dependent coverage.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.*

Nothing in the statute or regulation prescribes how communication of information should take place, leaving the parties free to determine whether or not to use electronic means of communication, consistent with their capabilities, business practices, and mutual agreements.

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To the extent that the information collection is a third-party disclosure, respondents may use electronic methods of communication pursuant to the standards established in the Department's regulation at 29 C.F.R. § 2520.104b-1(c) concerning plans' use of electronic communication media to satisfy ERISA disclosure requirements. That regulation provides that plan sponsors and administrators may distribute notices to employees who have access to e-mail at the place of business. In addition, notices may be distributed electronically to employees or their family members who are beneficiaries if they have electronic access at their homes and give prior approval to this type of distribution. The Department generally encourages affected entities to distribute required notices electronically whenever possible, provided that these regulatory standards are met and as discussed in Item 1 above, Part B of the "Instructions to the Plan Administrator" have been modified to clarify that the plan administrator may provide electronic notices to the custodial parent, child, and/or participant that are required pursuant to the NMSN, provided that the administrator complies with the Department's electronic disclosure regulations, at 29 CFR 2520.104b-1(c).

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

This information collection standardizes an exchange of information that had already been taking place, before promulgation of the NMSN Regulation, in accordance with private agreements, federal and state statutes governing the inclusion of health care coverage in child support agreements, and ERISA, but which had frequently not functioned as intended prior to the implementation of this uniform process. As such, the collection of information pursuant to the NMSN constitutes a modification and improvement of information already available, but which had not been easily collected and distributed to interested persons.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

The NMSN Regulation creates a standardized process to replace the varying processes that were already in place in 50 states and four protectorates. This information collection does not affect small businesses differently from large ones, except to the extent that the employer's size affects the probability of receiving a notice and the likelihood that an employer will offer a group health plan. The NMSN Regulation simplifies, standardizes, and streamlines pre-existing processes and therefore reduces the burden of compliance for all affected parties, including small business or other small entities.

6. *Describe the consequence to Federal program or policy activities if the collection is not*

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conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Development of a standardized notice was required by Federal statute (CSPIA). Only the information specified in the statute and considered necessary to implement coverage as intended under the statute has been made part of the NMSN. If this information collection were not conducted, previously existing inefficiencies in communications about child medical support orders between and among states, parents, employers, and group health plans would have likely continued. Specifically, children required under a divorce settlement agreement or a state-issued support order to be covered by the employer-sponsored health plan of a working parent would not be provided with coverage.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
- *requiring respondents to report information to the agency more often than quarterly;*
 - *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - *requiring respondents to submit more than an original and two copies of any document;*
 - *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
 - *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
 - *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
 - *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
 - *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to*

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protect the information's confidentiality to the extent permitted by law.

None.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department's notice of the proposed extension of the information collection contained in the National Medical Support Notice – Part B was published in the Federal Register on June 25, 2012 (77 Fed. Reg. 37920), pursuant to 5 CFR 1320.8(d) and provided the public with 60 days in which to comment on the proposed extension. The Department received one comment from the State of Washington Department of Social and Health Services. The comment letter provided general comments related to Part A of the Notice, which is administered Department of Health and Human Services (HHS) and Part B of the notice, which is administered by the Department and specific comments regarding Parts A and B.

Many of the general comments would require substantial revisions, which the Departments are unable to make at this time, because they are considering improvements and efficiencies to align the NMSN in the future with new health care coverage options under the Affordable Care Act. These revisions will be considered as part of this process. The commenter made several formatting suggestions. They requested that the left margin of the forms be no less than 0.75" to allow for the use of bar codes; however, the Departments believe the form already provides enough space in the footer of the bottom right margin, which can be used for a barcode. The commenter also requested more space on each line and to avoid side-by-side fields when possible. The Departments have tried to design the form to be more concise so it less costly for the states to use, and the form would be much longer if side-by-side fields are not used.

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Regarding the Part B comments, the commenter states that Page 1 lists the Gender, SSN, and DOB for each child, and the Part B response asks the plans administrator for the same information. Therefore, the commenter suggests removing the SSN identifier from Part B. The Department notes in response that Part B informs the plan administrator of the children that must be covered under non-custodial parent's group health plan and without this information, the plan administrator what not know which children to enroll. The commenter also asked several questions about including National Association of Insurance Commissioner Codes on the Part B; however, such Codes are not required to be included on the Notice. Finally, the commenter states, that employers, and plan administrators who have an existing document for collecting or providing insurance information should be allowed to continue to use their existing document rather than having to incur the cost of creating a new document. The Department notes that section 401 of the Child Support Performance and Incentive Act of 1998 amended both the ERISA and the Social Security Act to direct the Secretaries of Labor and Health and Human Services to jointly develop and require States to enact laws requiring use of the Notice to enforce medical support obligations of parents.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

None.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

None.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

None.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so,*

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agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

The Department has developed estimates of the number of NMSNs that will require responses from Plan Administrators under the NMSN Regulation, the number of responses, and the time required to respond, as described below. For purposes of this analysis, the Department has assumed that all NMSN responses will be prepared and distributed by Plan Administrators using their own resources. The burden of time spent in these activities is therefore accounted for as hour burden in this item 12. Additional costs are described in item 13, below.

The Office of Child Support Enforcement (CSE) in the Department of Health and Human Services (HHS) reports an estimated 5.3 million National Medical Support Notices (NMSNs) were sent. Based on Bureau of Labor Statistics (BLS) estimates, 4.4 million of these NMSNs would be sent to the private sector. Assuming that 41 percent of the individuals named in those NMSNs (the parent who is named as an employee of the employer) are no longer employed by the named employer, only 2.6 million NMSNs will relate to current employees of the employers to whom they were sent. Calculations based off the 2011 Medical Expenditures Panel Survey, Insurance Component (MEPS-IC) further suggest that, given insurance offer and eligibility rates of firms that offer family health plans to their employees, only 65 percent of the 2.6 million NMSNs that relate to current employees, or 1.7 million NMSNs will be forwarded to roughly 492,000 group health plans, whose Plan Administrators would then be required to make a Part B determination and respond as required in the Part B instructions.

It is assumed that all NMSNs sent to Plan Administrators will require 4 responses, that is, one response to each of the following parties: the issuing state agency, the employer, the non-

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employee/parent, and the employee/parent. However, certain NMSNs may require additional responses because the affected group health plan may offer multiple coverage options or impose a waiting period before coverage becomes effective. In either of those cases, the NMSN Regulation requires all parties must be separately notified. Based on the 2011 MEPS-IC, 62 percent of the annually issued NMSNs are expected to be sent to plans with multiple options and 82 percent are expected to be sent to plans with waiting periods. The Department assumes that a Plan Administrator will send only one additional response to a NMSN even if the group health plan has both a waiting period and multiple plan options, and so it is assumed that only 82 percent of the NMSNs will be affected by this requirement, increasing the annual number of Part B Plan administrator's responses by 1.4 million to 3.1 million total.

Since preparing the response requires only filling out a form, photocopying said form, preparing envelopes and mailing the responses to the issuing agency, employer, employee/parent and non-employee/parent, it is believed those tasks will require 20 minutes of an administrative assistant's time per response. Finally, it is assumed that all parties perform the necessary tasks themselves, rather than by paying fees for services.

The Department estimates the total annual hour burden to Plan Administrators arising from the NMSN Regulation to be 1 million hours. The equivalent cost of this hour burden, assuming a rate of \$28.21 per hour for administrative assistant time, total \$29.1 million.

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

Additional costs attributable to ICR arise from materials and mailings. The Department estimates the total annual burden for distribution of Plan Administrator responses to NMSNs will be \$6.8 million. This figure is derived by multiplying the assumed unit cost of \$0.55 for materials and mailing by the 12.4 million responses (3.1 million * 4) Plan Administrators will issue to NMSNs annually.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

None.

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15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

Using data obtained from the Bureau of Labor Statistics, specifically the increase in the percentage of workers in the private sector and a decrease in the separation rate of workers from their employers, the Department estimates that more NMSNs will reach employers, and therefore, more notices will be sent to plan administrators by employers.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

Not applicable; results will not be published.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

The OMB expiration date will be published in the Federal Register following OMB approval.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable.