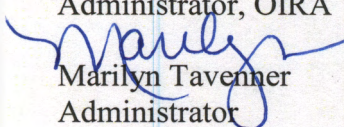




DATE: November 26, 2013

TO: Howard Shelanski
Administrator, OIRA

FROM: 
Marilyn Tavenner
Administrator

SUBJECT: Request for Emergency Clearance of the Paperwork Reduction Act Package for
Developing Federal Payment Rates for the Basic Health Program

Emergency Justification

The Centers for Medicare & Medicaid Services (CMS) is requesting that an information collection request to support the development of federal payment rates for the Basic Health Program (BHP) be processed under the emergency clearance process associated with Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.13(a)(2)(i). Public harm is reasonably likely to occur if the normal, non-emergency clearance procedures are followed.

More specifically, without PRA emergency approval, CMS will need to delay by approximately 4 months the release of BHP federal payment rates beyond the March 2014 timeframe that was published in the BHP proposed regulation released on September 25, 2013. Instead, CMS would release rates in early summer 2014 to accommodate the normal PRA approval process. Rates are needed in March 2014 to support state decisions to implement BHP on January 1, 2015, and to provide the necessary time for states to do their planning, contracting with issuers and to conduct open enrollment. Providing rates in the summer 2014 will likely postpone interested states' decisions and their implementation dates by as much as a year. This could result in as many as 1.3 million low income people not having access to BHP in early 2015, thereby prohibiting them from availing continuity of providers and health care that BHP is intended to provide. That is, BHP is a bridge program for low income people who today move in and out of health programs as their eligibility changes based on fluctuations in income and other factors, and such movements disrupt their access to providers and to services they need.

In accordance with Section 1331 of ACA, the BHP is federally funded by determining the amount of payments that the federal government would have made through premium tax credits (PTCs) and cost sharing reductions (CSRs) for people enrolled in BHP had they instead been enrolled in an Exchange. In order to calculate these amounts for each state, CMS needs the reference premiums for the second lowest cost silver plans (SLCSPs) in each geographic area in a state, as SLCSPs are a basic unit in the calculation of PTCs and CSRs under the Exchanges. Relatedly, the reference premiums for these SLCSPs are critical components in the BHP payment methodology in order to estimate what PTCs and CSRs would have been paid.

Similarly, CMS also needs to collect reference premiums for the lowest cost bronze plans to appropriately account for CSR calculations for American Indians and Alaskan Natives. CMS recently determined that it does not have sufficient data from State Based Exchanges (SBEs) to determine the reference premiums for their SLCSPs and lowest cost bronze plans. Reference premiums are foundational inputs into the BHP payment methodology.

The burden associated with this collection is low and noncontroversial. The seventeen SBEs already have these data, as they are needed to determine the SLCSPs and lowest cost bronze plans and to calculate their PTCs and CSRs. (CMS has this information for the remaining thirty-three states that are either Federally Facilitated Exchanges (FBEs) or State-Partners with the FBEs.) Furthermore, the BHP proposed regulation published on September 25, 2013 (78 FR 59121; 0938-AR93), under Section 600.610(a)(2), states that a state may be required to submit data in accordance with the published proposed payment notice in order for the Secretary to determine the State's payment rates. As such, we intend only to require SBEs to provide these data under this emergency approval and in December, 2014 if they want their rates published in the March 2014 BHP payment notice. We believe that states will be interested in submitting these data in time to include in the final BHP payment notice as it will help states consider implementing BHP effective January 1, 2015.

Background

In accordance with the BHP proposed rule published on September 25, 2013 (78 FR 59121; 0938-AR93), states can apply and be certified to operate a BHP as early as January 1, 2015. The BHP provides an alternative coverage program for certain low income individuals who would otherwise be eligible to obtain coverage through the Exchange. The parameters of the BHP program provide flexibility to states to better address potential disruptions in coverage and service delivery that low income people tend to face as their income fluctuates which can have a serious effect on their health status. This is a particularly important concern among people with chronic conditions and disabilities who are disproportionately low income and need continuity in their health care and other services. Among a state's key considerations in deciding whether to implement BHP is the amount of federal funding they would receive. Because of this consideration, it behooves CMS to publish BHP payment rates as soon as possible, thereby providing states with adequate time before the start of the BHP program year to complete a broad range of complex operational tasks. That is to say, a delay in the publication of the BHP payment rates would likely result in an interested state starting its BHP program later than expected and thereby delaying the opportunity for certain eligible people to receive coverage that better addresses their health needs through more uniform access to providers and services as their eligibility changes. The number of potentially affected people is 1.3 million based on estimates by the Office of the Actuary of eligible people in the states that have shown an interest in participating in BHP.

The earliest possible date to publish BHP payment rates is at the same time as publication of the BHP final rule, which is planned for March 2014. In order to publish these rates by March 2014, the latest possible date that CMS can receive reference premiums from SBEs is January 15, 2014.

We intend to publish the proposed BHP payment notice on December 6, 2013 which will provide the rationale for this data collection and the proposed formulation of the BHP payment rates. With emergency approval for the collection of reference premiums for SLCSPs, the public will

have two weeks to comment on the collection within the framing provided by the proposed notice, giving OMB and CMS one day to review, revise (if needed), and publish the approved information collection request (ICR). States would then have three weeks to provide the reference premiums.

We do not anticipate concerns from SBEs in providing these data as they will only be required from states who intend to implement the BHP, and we expect these data to be readily available as they are needed to operate their Exchange programs.

Timeline

November 26, 2013

- Submit Emergency Justification to OMB.

December 3, 2013

- Request OMB approval of Emergency Justification.
- Target date for submitting *Federal Register* notice to the OFR.

December 6, 2013

- Target date for publishing the proposed BHP payment notice.
- Target date for publishing the emergency *Federal Register* notice for this collection.
- Target date for submitting the ICR to OMB.
- Start of two week public comment period.

December 20, 2013

- End of two week public comment period.
- CMS will respond to public comments (if applicable).
- Start of OMB review period.

December 23, 2013

- Requested OMB approval date.
- Approved collection is posted.

January 15, 2014

- Reference premiums due from SBEs who want their state's BHP payment rates published with the final BHP payment notice in March 2014.