

## 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.*

The Patient Protection and Affordable Care Act (the Affordable Care Act) was signed by President Obama on March 23, 2010. Section 2712 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, and the Department's final regulation (26 CFR 54.9815-2712, 29 CFR 2590.715-2712, 45 CFR 147.2712)<sup>1</sup> provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and these interim final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group, or individual insurance market, or for self-insured coverage. These rules also apply regardless of any contestability period of the plan or issuer.

The PHS Act section 2712 mandated a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under these interim final regulations, even if prior notice is provided, rescission is only permitted in cases of fraud or an intentional misrepresentation of a material fact as permitted under the cited provisions.

These final regulations provide that a group health plan, or health insurance issuer offering group health insurance coverage, must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group.

The Department is now finalizing the 2010 interim final regulations without change to the information collections contained therein.

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<sup>1</sup> 75 FR 37187 (June 28, 2010).

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.*

The rescission notice will be used by health plans to provide advance notice to certain individuals that their coverage may be rescinded. The affected individuals are those who are at risk of rescission on their health insurance 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.*

The regulation does not require or restrict plans or issuers from using electronic technology to provide either disclosure. The Department of Labor's regulations under 29 C.F.R. § 2520.104b-1(b) provide that, "where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries." Section 29 CFR 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government.

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.*

The Affordable Care Act amended the Employee Retirement Income Security Act, the Internal Revenue Code, and the PHS Act. The main impact of the rescission provision will be on the individual insurance market, which is under the jurisdiction of the Department of Health and Human Services. The provision is expected to have a small

impact in the group health insurance market, which is under the jurisdiction of the Department of Labor. Therefore, there will be no duplication of effort.

5. *If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.*

Although this information collection does impact small plans, the impact is estimated to be negligible, because rescissions are rare in the group health insurance market.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

If this information were conducted less frequently, affected individuals would not be notified of potential rescission of their health insurance policy.

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 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 2010 interim final rules provided the public 60 days to comment on the information collections contained therein. No comments were received.

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.*

Not applicable

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.*

Not applicable.

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, 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.*
- *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 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.*

As discussed earlier, PHS Act Section 2712 and the final regulations prohibit group health plans and health insurance issuers that offer group or individual health insurance coverage generally from rescinding coverage under the plan, policy, certificate, or contract of insurance from the individual covered under the plan or coverage unless the individual (or a person seeking coverage on behalf of the individual) performs an act, practice, or omission that constitutes fraud, or unless the individual makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan or coverage. The final regulations provide that a group health plan or a health insurance issuer offering group health insurance coverage must provide at least 30 days advance notice to an individual before coverage may be rescinded.

The Department assumes that rescissions are rare in the group market and that small group health plans primarily are affected by rescissions. The Department is not aware of a data source on the number of group plans whose policy is rescinded; therefore, the Departments assume that 100 group health plan policies are rescinded in a year, and these plans are the respondents for the ICR. The Department estimates that there is an average of 15.33 participants in small, insured group health plans. Based on the foregoing, the Department estimates that approximately 1,500 policies are rescinded during a year, which would result in 1,500 advance rescission notices (responses) being sent to affected participants with 38 percent transmitted electronically and 62 percent mailed. The

Department estimates<sup>2</sup> that 15 minutes of legal professional time at \$129.94 per hour<sup>3</sup> would be required by the insurers of the 100 plans to prepare the notice, and one minute per notice of clerical professional time at \$30.42 per hour<sup>4</sup> would be required to distribute the paper notices. The Departments believe the costs of electronic transmission would be de minimis. This results in an hour burden of approximately 41 hours with an equivalent cost of approximately \$3,700.

The Department of Labor shares the hour burden of this information collection equally with the Department of Treasury; therefore, the hour burden allocated to the Department of Labor is approximately 20.5 hours with an equivalent cost of approximately \$1,850.

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

The Department estimates that the cost burden associated with distributing the 950 paper notices will be approximately \$500 (1,500\*62%\*( $\$0.49 + \$0.05$ )).<sup>5</sup> The Department of Labor shares the cost burden of this information collection equally with the Department of Treasury; therefore, the cost burden allocated to the Department of Labor is \$250.

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.*

Not applicable.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14.*

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<sup>2</sup> The Department's estimated 2015 hourly labor rates include wages, other benefits, and overhead are calculated as follows: mean wage from the 2013 National Occupational Employment Survey (April 2014, Bureau of Labor Statistics <http://www.bls.gov/news.release/pdf/ocwage.pdf>); wages as a percent of total compensation from the Employer Cost for Employee Compensation (June 2014, Bureau of Labor Statistics <http://www.bls.gov/news.release/ecec.t02.htm>); overhead as a multiple of compensation is assumed to be 25 percent of total compensation for paraprofessionals, 20 percent of compensation for clerical, and 35 percent of compensation for professional; annual inflation assumed to be 2.3 percent annual growth of total labor cost since 2013 (Employment Costs Index data for private industry, September 2014 <http://www.bls.gov/news.release/eci.nr0.htm>).

<sup>3</sup> Legal Professional (23-1011):  $\$63.46(2013 \text{ BLS Wage rate}) / 0.69(\text{ECEC ratio}) * 1.35(\text{Overhead Load Factor}) * 1.023(\text{Inflation rate}) ^2(\text{Inflated 2 years from base year}) = \$129.94$

<sup>4</sup> Secretaries, Except Legal, Medical, and Executive (43-6014):  $\$16.35(2013 \text{ BLS Wage rate}) / 0.675(\text{ECEC ratio}) * 1.2(\text{Overhead Load Factor}) * 1.023(\text{Inflation rate}) ^2(\text{Inflated 2 years from base year}) = \$30.42$

<sup>5</sup> This estimate is based on an average document size of one page, \$.05 cents per page material and printing costs, and \$.49 postage costs.

The final regulations do not change the information collections contained in the 2010 interim final regulations. The estimates have been updated to reflect more current per-plan participant counts and current wage and postage rates..

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.*

There are no plans to publish the results of this collection of information.

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 approval 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."*

None.

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

Not applicable.