

## **Supporting Statement Part A**

Medicare Program; Reporting and Returning of Overpayments (CMS-6037-F)

### **A. BACKGROUND**

On March 23, 2010, the Affordable Care Act was enacted. Section 6402(a) of the Affordable Care Act established a new section 1128J(d) of the Act. Section 1128J(d)(1) of the Act requires a person who has received an overpayment to report and return the overpayment to the Secretary, the State, an intermediary, a carrier, or a contractor, as appropriate, at the correct address, and to notify the Secretary, State, intermediary, carrier or contractor to whom the overpayment was returned in writing of the reason for the overpayment. Section 1128J(d)(2) of the Act requires that an overpayment be reported and returned by the later of-- (A) the date which is 60 days after the date on which the overpayment was identified; or (B) the date any corresponding cost report is due, if applicable.

Section 1128J(d)(4)(A) of the Act defines “knowing” and “knowingly” as those terms are defined in 31 U.S.C. 3729(b); the terms “knowing” and “knowingly” “mean that a person with respect to information—(i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information.” There need not be “proof of specific intent to defraud”.

Section 1128J(d)(4)(B) of the Act defines the term "overpayment" as any funds that a person receives or retains under title XVIII or XIX to which the person, after applicable reconciliation, is not entitled under such title. Lastly, section 1128J(d)(4)(C) of the Act defines the term "person" as a provider of services, supplier, Medicaid managed care organization (MCO) (as defined in section 1903(m)(1)(A) of the Act), Medicare Advantage (MA) organization (as defined in section 1859(a)(1) of the Act) or PDP sponsor (PDP) (as defined in section 1860D-41(a)(13) of the Act). This definition does not include a beneficiary.

In the February 16, 2012 **Federal Register** (77 FR 9179), we published a proposed rule (CMS-6037-P) that would implement the provisions of section 1128J(d) of the Act. The costs associated with this rule for providers and suppliers involve the latter’s researching, reporting, and returning of overpayments.

### **B. JUSTIFICATION**

#### **1. Need and Legal Basis**

The final rule (CMS-6037-F) is needed to implement the aforementioned statutory mandate of section 1128J(d), which requires a person who has received an overpayment to report and return the overpayment as well as the reason for the overpayment and in certain cases an explanation of the methodology used for determining the overpayment.

2. Information Users

CMS and/or its Medicare contractors and/or appropriate law enforcement may use the information that providers and suppliers submit to determine the appropriateness of the overpayment determination.

3. Use of Information Technology

CMS and/or its contractors will electronically record the data submitted and deposit the monies refunded, though the specific system(s) cannot be determined at this time.

4. Duplication of Efforts

This information collection enhances and strengthens CMS' existing overpayment recovery efforts.

5. Small Businesses

As indicated in the ICR section of CMS-6037-F, we believe that the overwhelming majority of Medicare providers and suppliers will not be affected by this rule. It is therefore not anticipated that this rule will have a significant effect on a substantial number of small businesses. We estimate in the ICR section of CMS-6037-F that the comparatively small percentage of providers and suppliers that will be affected by the rule will have to report and return 3 to 5 overpayments in a given year.

6. Less Frequent Collection

This information will be collected on an as-needed basis according to the statute.

7. Special Circumstances

There are no special circumstances associated with this information collection request.

8. Federal Register/Outside Consultation

The notice of proposed rulemaking published on February 16, 2012 (77 FR 9179-9187). The final rule published on February 12, 2016 (81 FR 7654-7684).

9. Payments/Gifts to Respondents

Not applicable.

10. Confidentiality

CMS and its Medicare contractors will comply with all Federal and State laws – including, but not limited to, the Federal Privacy Act and Freedom of Information Act – that apply to this collection. 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.

11. Sensitive Questions

There are no sensitive questions associated with this collection.

12. Burden Estimates (Hours & Wages)

We estimate in the ICR section of CMS-6037-F that:

- Roughly 125,000 providers and suppliers per year will be required to return and report between 3 and 5 overpayments
- Each instance of researching, reporting, and returning an overpayment would take 6 hours
- The average hourly wage of individuals performing these activities -- based on May 2015 data from the Bureau of Labor Statistics and accounting for overhead and fringe benefits --will be \$54.93.
  - The national estimated mean hourly wage for the category of "accountants and auditors" was \$36.19 (see <http://www.bls.gov/oes/current/oes132011.htm> ) and the national estimated mean hourly wage for the category of "bookkeeping, accounting, and auditing clerks" was \$18.74 (see <http://www.bls.gov/oes/current/oes433031.htm> ).
  - The average of these 2 figures, is \$27.46. This does not include fringe benefits and overhead which are generally calculated as being 100% of salary. This means the cost of an hour of work is \$54.93.

The chart below outlines the projected total annual costs to providers and suppliers of complying with the provisions of CMS-6037-F.

Number of Reported and Returned Overpayments Per Affected Provider	OMB Control No.	Respondents	Responses	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting (\$)	Total Labor Cost of Reporting (\$)	Total Cost (\$)
3	0938-New	125,000	375,000	6	2,250,000	54.93	122,219,250	122,219,250
4	0938-New	125,000	500,000	6	3,000,000	54.93	164,790,000	164,790,000
5	0938-New	125,000	625,000	6	3,750,000	54.93	205,987,500	205,987,500

We project an annual ICR cost burden of between \$122 million and \$205 million. The former represents our low-end estimate, while the latter is our high-end estimate. The \$164 million

estimate represents our primary, or mid-range, projection. While we have used a range of values to illustrate the possible burden estimates that providers may incur, we cannot submit a range of values for OMB approval. For purposes of OMB review and approval, we will use the mid-range estimate related to 4 reported and returned overpayments.

13. Estimates of other Total Annual Cost Burden to Respondents or Record Keepers (Capital Costs)

There are no additional record keeping/capital costs.

14. Annualized Cost to the Federal Government

The table below identifies the costs to the Federal government – through CMS, its Medicare contractors, and/or its agents - to process self-identified overpayments that are returned to CMS..

<b>Number of Reported and Returned Overpayments Per Affected Provider</b>	<b>Documents to be Collected and Processed/Tasks to be Performed</b>	<b>Time Needed to Process Document/ Complete Task Per Returned Overpayment (hours)</b>	<b>Total Annual Processing/ Task Burden (hours)</b>	<b>Per Hour Cost of Processing/Task Burden (\$) *</b>	<b>Total Cost of Processing/ Task Burden (\$)</b>
3	375,000	2	750,000	20.42	15,315,000
4	500,000	2	1,000,000	20.42	20,420,000
5	625,000	2	1,250,000	20.42	25,525,000

\* Per hour cost based on Grade 7/Step 1 salary in Washington, DC area for Calendar Year 2014.

While we have used a range of values to illustrate the possible costs to the Federal government; however, we cannot submit a range of values for OMB approval. For purposes of OMB review and approval, we will use the mid-range estimate related to 4 reported and returned overpayments per provider.

15. Changes to Burden

No changes to burden hours as this is a new collection.

16. Publication/Tabulation Dates

We intend to publish aggregate overpayment data in the CMS Annual Financial Report.

17. Expiration Date

There are no forms associated with this information collection request. However, upon receiving OMB approval, CMS will publish a notice in the Federal Register to inform the public of both the approval as well as the expiration date. In addition, the public will always be able to access

the expiration date on OMB's web site by performing a search on the OMB control number.

18. Certification Statement

There are no exceptions to item 19 of OMB Form 83-I.