

Supporting Statement for the Collection of State Medicaid Fraud Control Units' Reports as Proposed at 42 CFR § 1007.17

Background

The Office of Inspector General (OIG) has oversight authority for the State Medicaid Fraud Control Units (MFCUs or Units). As part of this oversight, OIG recertifies each MFCU annually and assesses each MFCU's performance and compliance with Federal requirements. Currently, there are 50 MFCUs which includes 49 States and the District of Columbia. The State of North Dakota has a waiver from the Secretary of Health and Human Services that exempts the State from having a MFCU. To aid in its oversight, OIG collects information from each of these 50 MFCUs on an annual basis. OIG has approval, under Office of Management and Budget (OMB) No. 0990-0162, through January 31, 2017 for the collection of information as required at 42 CFR §§ 1007.15 and 1007.17.

OIG proposes to revise the scope of its annual collection of information as part of a Notice of Proposed Rulemaking (NPRM) to revise the MFCU oversight regulations contained in 42 CFR part 1007. Thus, in accordance with the Paperwork Reduction Act, OIG requests OMB approval for the collection of information that is described in section 1007.17(a) of the NPRM. The information collected annually would consist of 50 separate reapplications that would include a brief narrative evaluating the MFCU's adherence to performance standards, the costs and outcomes of data mining, and information regarding compliance with 42 CFR part 1007 and other Federal requirements. Additionally, 50 separate annual statistical reports would be collected electronically. OIG would use the information collected to determine the MFCUs' compliance with Federal requirements and eligibility for continued Federal financial participation (FFP) under the Federal MFCU grant program. The collection would also allow OIG to assess performance and trends in Medicaid fraud and patient abuse and neglect across all MFCUs.

A. Justification

1. Need and Legal Basis

Public Law 95-142, the Medicare-Medicaid Anti-Fraud and Abuse Amendments, was enacted in 1977 to strengthen the capabilities of Federal and State governments to combat and eliminate fraud and abuse in Medicaid, through the establishment of the MFCUs. This law amended section 1903 of the Social Security Act to establish operating requirements for MFCUs and provide FFP to State governments for the cost of establishing MFCUs, training State personnel, and keeping the MFCUs operational.

Under section 1903(q)(7), each MFCU must annually submit to the Secretary of Health and Human Services (Secretary) a reapplication and annual report containing information

that the Secretary determines is necessary to recertify the MFCU as meeting the requirements for FFP. FFP is available only for activities directly related to the investigation and prosecution of health care providers suspected of committing Medicaid fraud and for reviewing complaints of alleged abuse or neglect of patients and the misuse of patients' personal funds in health care facilities. OIG reviews the information collected to ensure that Federal matching funds are expended by MFCUs only for allowable costs. Further, pursuant to section 1902(a)(61), in 1994 OIG developed 12 performance standards to be used annually in determining if a Unit is effectively and efficiently carrying out its duties and responsibilities. The performance standards have since been revised and republished at 77 Fed. Reg. 32645 (June 1, 2012). In addition, OIG analyzes each MFCU's submission to determine whether there is a need for OIG technical assistance and to establish priorities for onsite reviews to further monitor program activities.

2. Information Users

OIG uses the information to measure the efficiency and effectiveness of MFCUs and to evaluate funding and budget decisions made by each MFCU.

3. Improved Information Technology

No other methods are available, from a technology standpoint, to assess the MFCUs' efforts to combat and eliminate fraud and abuse in Medicaid without these proposed collections. Units have the ability to submit this information electronically. In particular, improved technology allows the MFCUs to submit their annual statistical information via a secure web portal through the Federal service provider, OMB MAX. This enhances OIG's ability to analyze MFCU data from individual MFCUs and the MFCUs as a whole.

4. Duplication of Similar Information

This collection does not duplicate other data collection efforts.

5. Small Business

The yearly collection of the statistical reports and recertification application requests from the State MFCUs have no relationship to small business.

6. Less Frequent Collection

Section 1903(q) of the Act, and proposed regulations at 42 CFR § 1007.17, require that each MFCU submit an annual reapplication for recertification and an annual statistical report with information necessary to determine whether the Unit meets Federal requirements for FFP. Without this particular information collection, a decision to recertify the MFCU as eligible to continue to receive Federal matching funds cannot be

finalized.

7. Special Circumstances

No special circumstances are involved in this collection of information. The OIG requirement that the MFCUs collect this information is in full compliance with law and regulations.

8. Federal Register Notice/Outside Consultation

A 60-day notice of the NPRM MFCU annual reporting and reapplication requirement was published in the *Federal Register*, Vol. 81, No.182, page 64383 on September 20, 2106. The MFCU annual report and reapplication is approved through March 31, 2017, under OMB No. 0990-0162.

9. Payment/Gift to Respondent

No such payments or gifts are foreseen to the respondents, and none have been given.

10. Confidentiality

The contents of the collection contains no personal identifying information regarding individuals, such as a Social Security number, home address, or other identifiable information. Proposed regulations at 42 CFR § 1007.11(f) require that the MFCUs safeguard the privacy of all beneficiaries and other individuals whose data is under the MFCU's control and will provide adequate safeguards to protect sensitive information and data under its control. In accordance with the principles of the Freedom of Information Act (FOIA), 5 U.S.C. 552, OIG will adhere to all applicable rules and provisions in the FOIA to which the contents of the collection are subject.

11. Sensitive Questions

Statutory and regulatory reporting requirements pertaining to the program do not require the Secretary (as delegated to OIG) to ask questions of a sensitive nature to make recertification and funding decisions relating to the MFCUs.

12. Burden Estimate (Total Hours and Wages)

The collection would contain certain mandatory information required annually as outlined at proposed 42 CFR § 1007.17 which includes a reapplication of a brief narrative, data mining outcomes, and an information request as well as an annual statistical report. All of these items would replace the "Annual Report" required at current § 1007.17. Specifically, the proposed reapplication contains several elements.

First, it would include a brief narrative that evaluates the Unit's performance, describes any specific problems it has had, and discusses any other matters that have impaired its effectiveness. This narrative could be in any format, as determined by each MFCU.

Second, those MFCUs approved by OIG to conduct data mining under 42 CFR § 1007.20 are required by the current regulation to submit the costs expended by the MFCU on data mining activities, the amount of staff time devoted to data mining activities, the number of cases generated from those activities, the outcome and status of those cases, and any other relevant indicia of return on investment from data mining activities. The reporting format for data mining activities is determined by each reporting MFCU.

Third, the proposed reapplication would also include an information request concerning compliance with the statute, regulations, and policy transmittals as well as adherence to the MFCU performance standards. The information request would be in a standard question and answer format and has always been a part of the reapplication.

Fourth, and separate from the reapplication, we propose that MFCUs provide a Federal fiscal year (FFY) annual statistical report containing data points found at proposed 42 CFR § 1007.17(b). This is consistent with the MFCU performance standard that a Unit have a case management system that (1) allows efficient access to case information and other performance data from initiation to resolution and (2) allows for reporting of case information. Units maintain case management systems on an ongoing basis and would upload the proposed data to a secure web portal through a Federal service provider, OMB MAX by November 30 of each year. This annual statistical report would replace the statistical information that we propose to no longer require in an "Annual Report," as at 42 CFR § 1007.17(a)-(e), although some of the data points are the same or similar to the statistics proposed in the annual statistical report. The proposed new data points would be an enhancement to our current information and would, on a FFY basis, more completely and accurately describe Unit staffing, caseload, criminal and civil case outcomes, collections, and referrals.

We estimate that the burden for these proposed collections would be similar to the burden approved under OMB approval No. 0990-0162. First, the currently approved burden estimate for the "Annual Report" is 88 hours per respondent. Because the burden previously assigned to the "Annual Report" would shift to the separate annual statistical report provided at the end of the FFY, we have re-estimated that preparing the brief narrative would take 3 hours per respondent, as noted in Table 12A. Based on reports from MFCU officials, providing information on data mining activities, if required, would require 1 hour of additional burden, as is currently approved. We have then shifted most of the balance of the current "Annual Report" burden (80 hours) to the proposed annual statistical report, also noted in Table 12A. We believe that most of the burden for preparing the annual statistical report consists of the ongoing updating of the Unit's case management system and not for the uploading of the actual report, so we believe the

estimate is accurate. Second, the recertification reapplication information request has not changed from current practice and is approved under OMB No. 0990-0162. However, based on reports from MFCU officials, we have increased the reapplication information request burden estimate by 4 hours per respondent to 9 hours. Thus, we estimate that after shifting the burden between collections, the total burden would be the same as currently approved.

Based on our knowledge of MFCU staff hourly rates and which MFCU staff person would prepare each collection, we estimate a MFCU official would spend approximately 29 hours at an estimated \$38 per hour preparing the reapplication and annual statistical report. We estimate that a MFCU support staff person would spend approximately 64 hours of effort at an estimated hourly rate of \$16 per hour to develop draft products, fulfill data entry activities, complete all required administrative functions, and confer with the MFCU supervising official, all of which are necessary to finalize the collection for submission to OIG. Based on these estimated hours and staff wage rates, the weighted average wage rate is \$22.85 per hour. Thus, identical to the estimate that was approved under OMB No. 0990-0162, our best estimate is that about 93 burden hours would be expended by each of the 50 MFCUs.

12A. Estimated Annual Burden Hours

Respondent	Collection	Number of Respondents	Number of Responses per Respondent	Average Burden per Response (in hours)	Total Burden Hours
MFCU	1007.17(a)(1) (i) Brief Narrative	50	1	3	150
MFCU, approved for data mining activities	1007.17(a)(1) (ii) Reporting on data mining activities.	7	1	1	7
MFCU	1007.17(a)(1) (iii) Recertification reapplication information request	50	1	9	400
MFCU	1007.17(a)(2) Annual Statistical Report	50	1	80	4000
Total		50	3 ¹	93	4,557²

¹ The Units not participating in data mining would have 3 responses; the 6 Units currently participating in data mining would

12B. Estimation of Annualized Cost to Respondents

Respondent	Collection	Total Burden Hours	Weighted Hourly Wage Rate	Total Respondent Cost
MFCU	1007.17(a)(1)(i) Brief Narrative	150	\$22.85	\$3,427.50
MFCU, approved for data mining	1007.17(a)(1)(ii) Reporting on data mining activities.	6	\$22.85	\$137.10
MFCU	1007.17(a)(1)(iii) Recertification reapplication information request	400	\$22.85	\$9,140.00
MFCU	1007.17(a)(2) Annual Statistical Report	4000	\$22.85	\$91,400.00
Total		4556	\$22.85	\$104,104.60

13. Capital Costs (Maintenance of Capital)

No maintenance of capital costs are associated with this collection.

14. Cost to Federal Government

The annual cost to the Federal government of processing the collection for each of the 50 MFCUs is based on the average time OIG staff takes to thoroughly review and analyze the information in each collection, as well as the time it takes to consult with MFCU officials and their staff, if appropriate. The number of participating OIG staff is 4. OIG staff takes 3 hours for each review. The estimated wage rate for OIG staff is \$26--\$51 per hour—an average of \$37 per hour. Based on this data, the average annual cost to the Federal Government for collection is approximately \$5,550. The hourly wage rate information was derived from personnel-payroll data. The figure used for OIG staff processing time was obtained from the participants.

15. Program or Burden Changes

There are no program or burden changes with this collection.

16. Publication and Tabulation Dates

have 4 responses.

² Since the 7 Units participating in data mining at an estimated 1 extra burden hour each, we added 7 hours to the total hours. As such, the total burden hours are the sum of all burden hours.

OIG would not publicize information submitted collected annually as a part of the reapplication. However, OIG does post summary statistical data of all MFCUs on the OIG website. The reapplication and statistical data does not include identifying information concerning ongoing investigations and prosecutions. However, if requested by through FOIA channels, information would only be disclosed on a case-by-case basis and only after a thorough FOIA review.

17. Expiration Date

This section is not applicable.

18. Certification Statement

No exceptions to the certification exist.

B. Collection of Information Employing Statistical Methods

No statistical methods are employed in relation to the information collected.