

Supporting Statement A
Quarterly Medicaid and CHIP Budget and Expenditure Reporting for the
Medical Assistance Program, Administration and CHIP
(MBES/CBES Forms CMS-21 and -21B, -37, and -64)
CMS-10529, OMB 0938-1265

BACKGROUND

This 2020 information collection request is associated with our June 19, 2020, proposed rule (CMS-2482-P, RIN 0938-AT82). The rule proposes to implement provisions of Bipartisan Budget Act of 2018 (BBA 2018) which includes several provisions that modify coordination of benefits (COB) and third party liability (TPL) in both statute and regulation related to special treatment of certain types of care and payment in Medicaid and Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA).

Effective February 9, 2018, section 53102(a)(1) of the Bipartisan Budget Act of 2018 amended section 1902(a)(25)(E) of the Act to require a state to use standard coordination of benefits cost avoidance when processing claims for prenatal services which now included labor and delivery and postpartum care claims. Additionally, effective October 1, 2019, section 53102(a)(1) of the Bipartisan Budget Act of 2018 amended section 1902(a)(25)(E) of the Act, to require a state to make payments without regard to third party liability for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days.

Section 53102(b)(2) of the Bipartisan Budget Act of 2018 delays the implementation date from October 1, 2017 to October 1, 2019 of the Bipartisan Budget Act of 2013 provision, which allowed for payment up to 90 days after a claim is submitted that is associated with medical support enforcement instead of 30 days under previous law. Medical support is a form of child support that is often provided through an absent parent’s employers health insurance plan.

Effective April 18, 2019, section 7 of the Medicaid Services Investment and Accountability Act of 2019 (Pub. L. 116-16) amended section 202(a)(2) of the Bipartisan Budget Act of 2013 to allow 100 days instead of 90 days to pay claims related to medical support enforcement under section 1902(a)(25)(F)(i) of the Act.

These proposed changes in law require a revision to existing regulations found at §433.139. Section 433.139(b)(2), (b)(3)(i) and (b)(3)(ii)(B) detail the exception to standard COB cost avoidance by allowing pay and chase for certain types of care, as well as the timeframe allowed prior to Medicaid paying claims for certain types of care. We are proposing to delete § 433.139(b)(2). We are also proposing to revise § 433.139(b)(3)(i) by removing “prenatal care for pregnant women, or” from pay and chase services, and § 433.139(b)(3)(ii)(B) by removing “30 days” and adding “100 days.”

MBES/CBES is a financial reporting system that produces Budget and expenditures for Medical Assistance and Children’s Health Insurance Program. All forms are to be filed on a quarterly basis and need to be certified by the States to the CMS.

Form CMS-64: Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, has been used since January 1980 by the Medicaid State Agencies to report their actual program benefit costs and administrative expenses to the Centers for Medicare & Medicaid Services (CMS). CMS uses this information to compute the Federal financial participation (FFP) for the State's Medicaid Program costs. The form CMS-64 has been modified over the years to incorporate legislative, regulatory, and operational changes.

Form CMS-37: It will be filed 45 days prior to the beginning of the Federal Fiscal year. Therefore, it will be filed on or before 2/15, 5/15, 8/15 and 11/15. It is an estimate for the year and quarter, both for the current year and the budgeted year. It needs to be certified before it is submitted to the MBESCBES.

Form CMS-21 and -21B: Similar to CMS-37, CMS-21B will file 45 days prior to the beginning of the Federal Fiscal year. It is required to file on or before 2/15, 5/15, 8/15, 11/15. Certain schedules of the CMS-64 form are used by States to report budget, expenditure and related statistical information required for implementation of the Medicaid portion of the State Children's Health Insurance Programs, Title XXI of the Social Security Act (the Act), established by the recently enacted Balanced Budget Act of 1997 (BBA). CMS-21are expenditure forms should be filed on or before 30 days after the end of the Federal quarter.

A. JUSTIFICATION

1. Need and Legal Basis

Form CMS-21 and -21B: Sections 4901, 4911, and 4912, of the Balanced Budget Act of 1997 (BBA) established a new Title XXI of the Act and related Medicaid provisions, which provides funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low- income children. In order to make appropriate payments to States pursuant to this new legislation, CMS amended the existing Medicaid Budget and Expenditure System (MBES) and established a new Child Health Budget and Expenditure System (CBES) and established new report forms for States to report budget, expenditure and related statistical information to CMS on a quarterly basis. Reporting of this information by States began after the end of the second quarter of Federal fiscal year 1998 (after the end of June 1998). The MBES/CBES system added a calculation to account for a temporary increase in the federal medical assistance percentage (FMAP) enacted under Section 5001 of the Affordable Care Act (ACA) of 2009.

Form CMS-37: Section 1903(d)(1) of the Social Security Act provides the need and legal basis for the collection of Medicaid budget and expenditure information from States:

"Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter.

Form CMS-64: Section 1903 of the Social Security Act provides the authority for collecting this information. States are required to submit the form CMS-64 quarterly to CMS no later than 30 days after the end of the quarter being reported. These submissions provide CMS with the information necessary to issue the quarterly grant awards, monitor current year expenditure levels, determine the allow ability of State claims for reimbursement, develop Medicaid financial management information provide for State reporting of waiver expenditures, ensure that the federally-established limit is not exceeded for HCBS waivers, and to allow for the implementation of the Assignment of Rights and Part A and Part B Premium (i.e., accounting for overdue Part A and Part B Premiums under State buy-in agreements)--Billing Offsets. The structure of the current form CMS-64 has evolved from the previous forms used for reporting (form OA.41 and form CMS-64). Classification, identification and referencing used in the CMS-64 forms has been in place for several years, is readily understood and accepted by the report users, and is supported by strong sentiments in both CMS and the States to maintain the existing format. Beginning in the first quarter of FY 2010 expenditure reporting cycle, CMS redesigned the MBES/CBES system, and have received favorable responses from both CMS and the States. In addition, Sections 2301, 2501, 2703, and 4107 enacted under the ACA, established a Freestanding Birth Center Category of Service (COS), Prescription Drug Rebate COS, Health Homes for Enrollees with Chronic Conditions COS, and Tobacco Cessation for Pregnant Women COS respectively. To account for this legislation, CMS expanded the MBES/CBES through the addition of new COS Line items. During FY2011 and FY2012 we added Sections 1202, Primary Care and 4106 for preventive Services under ACA.

2. Information for Users:

Form CMS-21 and -21B: CMS-21 are expenditure forms should be filed on or before 30 days after the end of the Federal quarter.

Form CMS-37: Is an estimate for the year and quarter, both for the current year and the budgeted year. It needs to be certified before it is submitted to the MBES/CBES.

Form CMS-64: Used by the Medicaid State Agencies to report their actual program benefit costs and administrative expenses to the CMS. CMS uses this information to compute the Federal financial participation (FFP) for the State's Medicaid Program costs.

3. Use of Improved Information Technology

CMS has developed an automated Medicaid budget and expenditure system for use within CMS using electronic transfer between States and CMS for processing all State Medicaid budget & expenditure data. During the planning phase of the MBES/CBES redesign, CMS saw the need to reorganize and create a System's team to assist with the development, migration and maintenance of the MBES/CBES system. A part of the team's purpose is to be an effective liaison between CMS and the contractor. The system's team consults with the contractor regularly to ensure that the system is functioning according to the system's business rules, and to provide guidance to the State and CMS personnel should they have questions or identify glitches. As a result of this process, the MBES/CBES system continually evolves to meet the

needs of MBES/CBES users and stay true to the MBES/CBES system's purpose. In addition, the Header columns are now fixed which assists in streamlining a particular task by reducing the time that a user had to scroll up and down to view the headers. As a result of additional COS Line items and enhanced graphics, the loading time has increased for many of the larger forms. To help continually enhance the system's performance, a "quick entry" solution was implemented for the largest forms, and it is CMS' intent to apply this function more frequently to the larger forms. The additional COS Lines assists the States as well as CMS by means simplifying the identification, reporting and analysis of these budget & expenditures. Moreover, the new platform has significantly less down time, and the new platform helps to optimize the overall performance of the MBES/CBES system. Although there are new COS Lines, they do not result in an increase in burden as this information was originally reported on the 64.9I, 64.10I, 64.9PI, and 64.10PI Informational Forms (I-Forms). In addition, the Line items added in accordance with ACA do not result in an increase in burden because the updated MBES/CBES system's intuitive, efficient nature, and reduced down time offsets any increase in time for data entry.

4. Duplication/Similar Information

The information covered by this request does not duplicate any data being collected. While the form CMS-37, Medicaid Program Budget Report, is used to collect expenditure data, it is used only to report estimated data on a quarterly basis for budgetary purposes. The form CMS-64 is the only means used by CMS to collect actual expenditure data on a quarterly basis. CMS-21B collects expenditure Estimates for CHIP program. CMS-21 collect actual Expenditures on quarterly basis.

5. Small Business

This information collection does not significantly impact small businesses.

6. Less Frequent Collection

Failure to collect the data on a quarterly basis may result in Federal funds not being returned promptly and properly to the Federal Government. States could misspend large sums of Federal funds undetected with no immediate mechanism of recovery. Conversely, there are instances where States are due Federal funds and delays in reimbursing States could cause financial hardships on a State and adversely impact the operation of the Medicaid program. Quarterly report apply to CMS-37, -64, -21B, and -21.

7. Special Circumstances

There are no special circumstances that would require an information collection to be conducted in a manner that requires respondents to:

- Report information to the agency more often than quarterly;
- Prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Submit more than an original and two copies of any document;

- Retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- Collect data 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,
- Use a statistical data classification that has not been reviewed and approved by OMB;
- Include 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
- 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.

8. Federal Register Notice/Outside Consultation

The proposed rule (CMS-2482-P, RIN 0938-AT82) published in the Federal Register on June 19, 2020 (85 FR 37286).

9. Payment/Gifts To Respondents

There were no payments/gifts to respondents.

10. Confidentiality

Forms CMS-64, -37, -21, and -21B do not collect information on individuals. Consequently, they are not subject to the Privacy Act.

11. Sensitive Questions

There are no sensitive questions associated with this collection. Specifically, the collection does not solicit questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. Burden Estimate

Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2019 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/current/oes_nat.htm). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

BLS Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Overhead (\$/hr)	Adjusted Hourly Wage (\$/hr)
Data Entry and Information Processing Workers	43-9020	17.52	17.52	35.04
Financial Analysts	13-2098	45.27	45.27	90.54

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Collection of Information Requirements and Respondent Burden Estimates

Respondents consist of 56 State or territorial Medicaid agencies. Each respondent will make four quarterly submissions to CMS with an average staff effort of 20 or 40 hours per submission.

Since reports are submitted electronically, there are negligible printing and distribution costs to the respondent. The total annual respondent burden follows:

CMS-64

9,184 hours (56 agencies x 41 hr x 4 qtr)
 \$819,087 [56 agencies x 4 qtr x ((40 hr x \$90.54/hr) + (1 hr x 35.04))]

CMS-37

4,480 hours (56 agencies x 20 hr x 4 qtr)
 \$405,619 (4,480 hr x \$90.54/hr)

CMS-21/21B

4,480 hours (56 agencies 20 hr x 4 qtr)
 \$405,619 (4,480 hr x \$90.54/hr)

Total

18,144 hours (9,184 hr + 4,480 hr + 4,480 hr)
 \$1,630,325 (\$819,087 + \$405,619 + \$405,619)

When considering the Federal match, the State share is 50% of the cost.

Total Respondents Cost (Rounded)	\$1,630,325
Less 50% Federal Match	- \$815,163 (\$1,630,325 x 0.5)
Respondents Share of Cost	<u>\$815,163</u>

Information Collection Instruments and Instruction/Guidance Documents

Attached are non-screen shot versions of CMS Forms CMS-21, CMS-21B, CMS-37, and CMS-

64. We are providing this version since the printed screen shot versions would be cumbersome and burdensome to review – they would consist of more than a hundred pages. Moreover, the non-screen shots versions set out the same identical data fields as the screen shots would.

To view the forms as they appear on the Main MBES Production screens the MBES URL Test Site can be found at: <https://mbeschesval0.medicaid.gov/MBESCBES/Default.aspx>

- Form CMS-21 and -21B: These are expenditure forms which should be filed on or before 30 days after the end of the Federal quarter. (No changes)
- Form CMS-37: Provides an estimate for the year and quarter, both for the current year and the budgeted year. It needs to be certified before it is submitted to the MBES/CBES. (No changes)
- Form CMS-64: Used by Medicaid State Agencies to report their actual program benefit costs and administrative expenses to the CMS. CMS uses this information to compute the Federal financial participation (FFP) for the State's Medicaid Program costs. (No changes)

13. Capital Cost

There is no capital cost.

14. Cost to the Federal Government

We use the hourly salary from the General Schedule (GS) Locality Pay Table for employees with the grade of GS-14 step 3 (at \$55.10/hr) to estimate analyst cost. Because of the various localities involved, we used the hourly rate chart for the “REST OF THE UNITED STATES” link below.

https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/RUS_h.pdf

Central Office Costs

Central Office cost would include an estimated average of salaries for a GS-14 step3 analyst (at \$55.10/hr) that reviews forms CMS-64, -37, -21B and -21.

For the CMS-64, analysts’ costs are based on reviewing 224 submissions per year (56 submissions times 4 quarters per year). Each review takes approximately 7 hours to complete at \$55.10 per hour totaling \$86,397 (224 submissions x 7 hours x \$55.10 per hour).

For CMS-37, analysts cost are based on reviewing 224 submissions per year (56 submission times 4 quarters per year). Each review takes approximately 4 hours to complete at \$55.10 per hour totaling \$49,370 (224 submissions x 4 hours x \$55.10 per hour).

For CMS-21B, analysts cost are based on reviewing 224 submissions per year (56

submission times 4 quarters per year). Each review takes approximately 4 hours to complete at \$55.10 per hour totaling \$49,370 (224 submissions x 4 hours x \$55.10 per hour).

For CMS-21, analysts cost are based on reviewing 224 submissions per year (56 submission times 4 quarters per year). Each review takes approximately 4 hours to complete at \$55.10 per hour totaling \$86,397 (224 submissions x 7 hours x \$55.10 per hour).

Total central office analyst cost is estimated at \$271,534.

Printing and Distribution Costs

Printing and distribution costs are estimated to be \$7,100. This has been confirmed with CMS's Printing and Distribution Branch.

Regional Office Costs

Regional office costs are calculated as follows: 2,080 total hours per person year, multiplied by 90 full time financial management employees totals 187,200 hours. It is estimated that 23 percent of total staff time is spent on analysis of the form CMS-64 at a cost of \$55.10 per hour totaling \$2,372,386 (187,200 x 23% x 55.10).

Federal Share of State Reporting Costs

The total Federal share is half of the total State reporting costs or \$815,163 (see section 12, above).

TOTAL

The total Federal cost consists of central office review, regional office review, printing and distribution and the Federal share of State reporting costs.

\$271,534	Central Office Review
\$ 7,100	Printing and Distribution
\$2,372,386	Regional Office Review
+ \$815,163	<u>State Reporting Federal Share</u>
\$3,466,183	Total

15. Changes in Program/Burden

This 2020 information collection request is associated with our June 19, 2020, proposed rule (CMS-2482-P, RIN 0938-AT82).

The rule proposes to implement provisions of Bipartisan Budget Act of 2018 (BBA 2018) (Pub. L. 115-123, enacted February 9, 2018), which includes several provisions that modify COB and TPL in both statute and regulation related to special treatment of certain types of care and payment in Medicaid and Children's Health Insurance Program Reauthorization Act of 2009

(CHIPRA) (Pub. L. 111-3, enacted February 4, 2009). Section 53102 of BBA 2018 amended the TPL provision at section 1902(a)(25) of the Act. Effective February 9, 2018, section 53102(a)(1) of the BBA 2018 amended section 1902(a)(25)(E) of the Act to require states to cost avoid claims for prenatal care for pregnant women including labor and delivery and postpartum care, and to allow the state Medicaid agency 90 days instead of 30 days to pay claims related to medical support enforcement services, as well as requiring states to collect information on TPL before making payments. Effective April 18, 2019, section 7 of the Medicaid Services Investment and Accountability Act of 2019 (the MSIAA) amended section 1902(a)(25)(E) of the Act to allow 100 days instead of 90 days to pay claims related to medical support enforcement services, as well as requiring states to collect information on TPL before making payments.

On April 18, 2019, section 7 of the MSIAA amended section 1902(a)(25)(E) of the Act to allow 100 days instead of 90 days to pay claims related to medical support enforcement and preventive pediatric services, as well as requiring all states, the District of Columbia, and the territories (56 respondents) to collect information on third party TPL before making payments (§ 433.139(b)(2), (b)(3)(i) and (b)(3)(ii)(B)). Under the authority in section 1902(a)(25)(A) of the Act, our regulations at 42 CFR part 433, subpart D establishes requirements for state Medicaid agencies to support the coordination of benefits (COB) effort by identifying TPL. Sections 433.139(b)(2), (b)(3)(i) and (b)(3)(ii)(B) detail the exception to standard COB cost avoidance by allowing pay and chase for certain types of care, as well as the timeframe allowed prior to Medicaid paying claims for certain types of care. Title XIX of the Act requires state Medicaid programs to identify and seek payment from liable third parties, before billing Medicaid.

We estimate it would take 1 hour at \$35.04/hr for a data entry/information processing worker to collect information on TPL and report that information to CMS on CMS-64 on a quarterly basis. In aggregate we estimate an annual burden of 224 hours (1 hr/response x 4 responses/year x 56 respondents) at a cost of \$7,849 (224 hr x \$35.04/hr).

Our changes are related only to the method states are required to use when reviewing and adjudicating claims for specific services. The BBA changes for which we are updating our regulation would require that states cost avoid claims when a liable third party is identified for a specific service that states were previously allowed to pay and chase. Since CMS-64 does not require expenditures to be reported by service type, the CMS-64 form does not require any such revisions.

16. Publication and Tabulation Data

The results of this information collection are not planned for publication for statistical use nor does this information collection employ statistical research methodologies.

17. Expiration Date

CMS would like to display the expiration date as determined by OMB

18. Certification Statement

There are no exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods

The use of statistical methods does not apply.