

**Supporting Statement for Paperwork Reduction Act  
Information Collection for the process and information required for Transitional Pass  
through payments related to Drugs, Biologicals, and Radiopharmaceuticals to  
determine eligibility under the Outpatient Prospective Payment System and Supporting  
Regulations in 42 CFR Part 419, Section 419.64**

*(Refer to the following:*

<http://www.cms.gov/HospitalOutpatientPPS/Downloads/drugapplication.pdf>)

(CMS-10008, OMB 0938-0802)

**A. Background**

Enacted in section 1833(t)(6) of the Act provides for temporary additional payments or “transitional pass-through payments” for certain drugs and biological agents. As originally enacted by the Balanced Budget Refinement Act (BBRA), this provision required the Secretary to make additional payments to hospitals for current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act (Pub. L. 107-186); current drugs and biological agents and brachytherapy used for the treatment of cancer; and current radiopharmaceutical drugs and biological products. For those drugs and biological agents referred to as “current,” the transitional pass-through payment began on the first date the hospital OPSS implementation (before enactment of Benefits Improvement and Protections Act (BIPA) (Pub. L. 106-554), on December 21, 2000).

In addition, transitional pass-through payments are also required for certain “new” drugs, devices and biological agents. Newness as defined (as these items were not to be paid) as a hospital outpatient department (OPD) service as of December 31, 1996, and whose cost is “not insignificant” in relation to the outpatient perspective payment system (OPSS) payment for the procedures or services associated with the new drug, device, or biological. Under the statute, transitional pass-through payments (once approved) can be made for at least 2 years but not more than 3 years.

The process to apply for transitional pass-through payment for eligible drugs, biologicals, and radiopharmaceuticals are located on the following CMS website:

<http://www.cms.gov/HospitalOutpatientPPS/Downloads/drugapplication.pdf>.

To date, thousands of drugs have qualified for transitional pass-through payments through our application process. To keep pace with emerging new technologies and make them accessible to Medicare beneficiaries in a timely manner as the law intended, it is necessary that we continue to collect appropriate information from interested parties such as hospitals and pharmaceutical companies that bring to our attention specific new drugs, biologicals and radiopharmaceuticals to be evaluated for transitional pass-through status.

In addition, to keeping pace with new technology, we are making the application process more efficient, we are implementing an electronic application intake system called the Medicare

Electronic Application Request Information System (MEARIS) for the CMS-10008 form. The form is near completion and we anticipate the “transitional pass-through payments” for drugs and biological agents section of MERIS to go live by mid-June of 2022. This electronic application intake system is essentially identical to the paper application form (CMS-10008, OMB 0938-0802) except for a few minor changes to either accommodate the web format or further provide simplification or clarification of the existing application questions. We are not requesting any new information.

Please refer to our crosswalk document for a more detailed comparison of the differences between the paper and electronic application intake system. We consider all of the changes to be minor since they do not constitute changes to the intent or substance of the requirement for transitional pass through payments related to Drugs, Biologicals, and Radiopharmaceuticals to determine eligibility under the OPPS application process, but only simplify or clarify the content and streamline the reporting process. These changes have no impact on the previously stated burden associated with this collection.

Therefore, we are requesting an approval for a revision from OMB, for the Information Collection and the processing and information required for the transitional pass through payments related to Drugs, Biologicals, and Radiopharmaceuticals to determine eligibility under OPPS application process.

In addition, as of April 10, 2020, applicants have been able to submit their application via electronic submission and are not required to submit OPPS Pass through and New Technology APC applications using the US Postal Service or other means of physical delivery such as delivery services because the physical delivery of the application submissions may be significantly delayed.

## **B. Justification**

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

Section 201(b) of the BBRA 1999 amended section 1833(t) of the Act by adding new section 1833(t)(6). This provision requires the Secretary to make additional payments to hospitals for a period of 2 to 3 years for certain drugs, radiopharmaceuticals, biological agents, medical devices and brachytherapy devices. Section 1833(t)(6)(A)(iv) establishes the criteria for determining the application of this provision to new items. Section 1833(t)(6)(C)(i) provides that the additional payment for drugs and biologicals be the amount by which the amount determined under section 1842(o) of the Act exceeds the portion of the otherwise applicable hospital outpatient department fee schedule amount that the Secretary determines to be associated with the drug or biological.

Section 1833(t)(6)(D)(i) of the Act sets the payment rate for pass-through eligible drugs and biologicals (assuming that no pro rata reduction in pass-through payment is necessary) as the amount determined under section 1842(o) of the Act. Section 303(c) of Pub. L. 108-173 amended Title XVIII of the Act by adding new section 1847A. This new section establishes the use of the average sales price (ASP) methodology for payment for drugs and

biologicals described in section 1842(o)(1)(C) of the Act furnished on or after January 1, 2005. Therefore, as we stated in the November 15, 2004 Federal Register (69 FR 65776), in CY 2005, we will pay under the OPSS for drugs, biologicals and radiopharmaceuticals with pass-through status consistent with the provisions of section 1842(o) of the Act as amended by Pub. L. 108-173 at a rate that is equivalent to the payment these drugs and biologicals will receive in the physician office setting, and established in accordance with the methodology described in the CY 2005 Physician Fee Schedule final rule. Information on Average Sales Price is found at

<http://www.cms.hhs.gov/McrPartBDrugAvgSalesPrice/>.

The intent of these provisions is to ensure that timely beneficiary access to new pharmacological technologies are not jeopardized by inadequate payment levels.

## 2. Information Users

The process and information required to determine the eligibility of drugs, biologicals and radiopharmaceuticals for transitional pass-through payment status is posted on the CMS web site, specifically at:

<http://www.cms.gov/HospitalOutpatientPPS/Downloads/drugapplication.pdf>.

Interested parties such as hospitals, pharmaceutical companies, and physicians will apply for transitional pass-through payment for drugs, biologicals, and radiopharmaceuticals used with services covered under the hospital OPSS. After we receive all requested information, we will evaluate the information to determine if the criteria for making a transitional pass-through payment are met and if an interim healthcare common procedure coding system (HCPCS) code for a new drug, biological, or radiopharmaceutical is necessary. We will advise the applicant of our decision, and update the hospital OPSS during its next scheduled quarterly update to reflect any newly approved drug, biological, or radiopharmaceutical. Based on experience gained in processing transitional pass-through and new technology applications, we have reworded some of the statements for clarity and have more clearly requested information in a format that will allow us to determine if the drug, biological, or radiopharmaceutical meets the cost significance test, as well as to estimate the associated pass-through payment amount. In addition, we have also eliminated the requirement for applicants to obtain a national Level II HCPCS code prior to seeking transitional pass-through payment eligibility, or provide us with a copy of their application for a national HCPCS code, as we had originally required in the April 7, 2000 final rule.

## 3. Improved Information Technology

In an effort to improve information technology, we are making the application process more efficient, by implementing the MEARIS for the CMS-10008 form. Our current collection of information did not involve the use of automated, electronic or other technological collection techniques. Our current estimate based on our experience remains at 30 applications per year.

#### 4. Duplication of Similar Information

Some of the information contained in this collection is similar to that submitted by applicants who apply for national HCPCS codes for new items. Therefore, the information required of applicants serves a two-fold purpose and minimizes, rather than duplicates, information.

#### 5. Small Businesses

This information collection will affect small entities such as providers of hospital outpatient services and small drug or biological manufacturers that wish to have items evaluated for transitional pass-through payment status under the hospital OPPIs. To minimize the burden, we have limited the specific information being collected solely to the essential elements necessary to make the appropriate decisions. Much of the information collected is information that is routinely developed and maintained by manufacturers seeking FDA's approval/clearance of devices, drugs, and biologicals; is used for marketing purposes; and is submitted to CMS to obtain national HCPCS codes for billing purposes. Much of this information is also readily available to hospitals through their record keeping systems.

#### 6. Less Frequent Collection

This information is collected only as needed to comply with statutory requirements regarding the establishment of pass-through payment for new drugs, biologicals, and radiopharmaceuticals. This is not a regularly scheduled information collection. The frequency and timing of information collection is determined individually by interested parties, based on the number of items they wish to have evaluated. If we were to collect this information less frequently, CMS would not obtain the data it needs to evaluate such requests, nor would we be able to make transitional pass-through payments for drugs or non-implantable biologicals that may be eligible for such payments.

#### 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 60-day Federal Register notice published on 5/11/2021 (86 FR 25872)  
No comments were received during the comment period.

The 30-day Federal Register notice published on 7/21/2021 (86 FR 38486)

9. Payments/Gifts To Respondents

There is no payment or gift to respondents.

10. Confidentiality

Because CMS intends to make information used in the rate-setting process under the OPPS available to the public for analysis, applicants are advised that any information submitted, including commercial or financial data, is subject to disclosure for this purpose.

11. Sensitive Questions

There are no questions of a sensitive nature.

12. Burden Estimate (Total Hours & Wages)

We anticipate receiving a total of 30 drugs, biological and radiopharmaceutical requests annually for transitional pass-through payment determination. We estimate that it will take approximately 16 hours on average for an applicant (healthcare practitioners and technical occupations) to compile the information requested. Based on an assumption of 30 requests, the total burden is 16 hours (average time) x 30 = 480 hours (annual).

As referenced earlier, we believe healthcare practitioners and technical occupations will be responding to the information collection requirements. Based on the most recent Bureau of Labor and Statistics Occupational and Employment Data (May 2019) for Category 29-0000 (Healthcare Practitioners and Technical Occupations), which can be found at [http://www.bls.gov/oes/current/oes\\_md.htm](http://www.bls.gov/oes/current/oes_md.htm), the mean hourly wage for a healthcare and technical occupations is \$41.79. We have added 100% of the mean hourly wage to account for

fringe and overhead benefits, which calculates to \$83.58 (\$41.79 +\$41.79). We estimate the total annual cost to be \$40,118.40 (480 hours x \$83.58/hour).

### 13. Capital Costs

Not applicable to this collection.

### 14. Cost to the Federal Government

The cost to process the information submitted is estimated as follows based on review by analysts/ medical officers and supervisory staff. This review includes analyses, callbacks to applicants to clarify or obtain missing information, required data calculations, and database inputs. We estimate the total time to process, evaluate and reach a decision is 40 to 60 hours per drug, biological, or radiopharmaceutical application. We use the midpoint of this range to derive the following estimate.

\$60/hr (average salary GS 13/14/15) x 50 hours/ request x 30 requests = \$90,000

### 15. Changes to Burden

There are no changes to burden. Our estimate of 30 applications per year remains the same. Since the implementation of the hospital OPPS in August 2000, the number of applications received have varied, and usually dependent on the number of new drugs approved by the FDA per year. Many of the drugs, biologicals, and radiopharmaceuticals that were approved for pass-through status two years ago have already met the 2 to 3 year period for pass-through payment. As a result, we receive only pass-through applications for new drugs, biologicals, and radiopharmaceuticals. The number of pass-through applications will vary from year to year and form 83-C will be filed to account for the changes, but our estimate of 30 applications remains the same. The implementation of MEARIS does not have an effect on burden.

### 16. Publication and Tabulation Dates

We do not plan to publish the information collected under this submission. However, the information will be used to determine eligibility for the special transitional pass-through payment provisions of the BBRA 1999 and BIPA 2000. If a new drug, biological or radiopharmaceutical is determined to be appropriate, it will be included on a list of identified additional pass-through/ new technology items and device categories which will be posted on our web site, published in the appropriate Federal Register notice and distributed via program transmittals to CMS contractors. CMS intends to make information used in the rate setting process under the OPPS available to the public for analysis, which would include information related to transitional pass-through payments such as that submitted in the applications for drugs, biologicals and radiopharmaceuticals.

17. Expiration Date

The expiration date will be displayed on the bottom of the last page of the application form.

18. Certification Statement

There are no exceptions to the certification statement.

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

Not applicable to this collection.