

Supporting Statement – Part A
**Coverage of Certain Preventive Services Under the Affordable Care Act: Data
Submission Requirements to Receive the Federally-facilitated Exchange User Fee
Adjustment**
**(CMS-10492/OMB control number 0938-
1285)**

A. Background

The Patient Protection and Affordable Care Act (ACA) (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act (Pub. L. 111-152), reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The ACA adds section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to make sections 2701 through 2728 of part A of title XXVII of the PHS Act applicable to group health plans. Section 1311(d)(5)(A) of the ACA contemplates an Exchange charging assessments or user fees to participating issuers to generate funding to support its operations. When operating a Federally-facilitated Exchange (FFE) under section 1321(c)(1), HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) of the statute to collect and spend such user fees. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. Office of Management and Budget Circular A-25 Revised (Circular A-25R) establishes Federal policy regarding user fees and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. On March 11, 2013, HHS published the HHS Notice of Benefit and Payment Parameters for 2014 (78 FR 15410), which establishes a user fee for issuers participating in an FFE. On March 8, 2016, HHS published the HHS Notice of Benefit and Payment Parameters for 2017 (81 FR 12204), which establishes a user fee for issuers participating in a State-based Exchange on the Federal platform (SBE-FP).

The final rule “Coverage of Certain Preventive Services Under the Affordable Care Act” (78 FR 39870) published by the Departments of Health and Human Services (HHS), the Treasury, and Labor (collectively, the Departments) on July 2, 2013, set forth regulations regarding coverage for certain preventive services under section 2713 of the PHS Act. Section 2713 of the PHS Act requires coverage without cost sharing of certain preventive health services, including certain contraceptive services, in non-exempt, non-grandfathered group health plans and health insurance coverage. The final regulations establish rules under which the third party administrator of a self-insured group health plan will provide or arrange for a third party to provide separate contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. Under *Little Sisters of the Poor v. Pennsylvania* all employers are eligible for accommodation associated with the provision of certain preventative health services, including certain contraceptive services, and need not

provide a copy of self- certification for religious accommodation with the provision certain preventative health

services, including the provision of certain contraceptive services, to their third party administrators. For third part administrators, the final rules also set forth payment for certain preventive health services, including certain contraceptive services, and reimbursement by health insurance issuers offering plans through the FFE or SBE-FPs and paying user fees. The final rules also finalized the submission of this information to HHS and the adjustment of user fees to compensate issuers, as well as standards to fund the payments for the contraceptive services that are provided for participants and beneficiaries in self-insured plans of eligible organizations under the accommodation described previously, through an adjustment in the FFE user fee payable by an issuer participating in an FFE. On May 5, 2021, HHS published Part 2 of the HHS Notice of Benefit and Payment Parameters for 2022 (86 FR 24140), which clarified that issuers participating through SBE-FPs are eligible to receive adjustments to their federal user fee amounts that reflect the value of contraceptive claims they have reimbursed to third party administrators.

The Departments have also issued additional rules and guidance implementing section 2713 of the PHS Act, including guidance specific to coverage of contraceptive services, rules providing exemptions from the contraceptive coverage requirement for entities and individuals with moral or religious objections to contraceptive coverage, and accommodations through which participants, beneficiaries, and enrollees enrolled in coverage sponsored or arranged by an exempt entity could separately obtain contraceptive services coverage. These additional rules include the following:

- Interim final rules on August 27, 2014, at 79 FR 51092 (August 2014 interim final rules), which amended the July 2013 final rules and provided an alternative process that an eligible organization may use to provide notice of its religious objection to the coverage of contraceptive services.
- Final rules on July 14, 2015, at 80 FR 41317 (July 2015 final rules), which expanded the definition of “eligible organization” to allow closely held for-profit entities to access an accommodation with respect to the coverage of contraceptive services.¹
- Interim final rules on October 13, 2017, at 82 FR 47792 (October 2017 Religious interim final rules), which expanded existing religious exemptions from the contraceptive coverage requirement to objecting entities and individuals and rendered the existing accommodation process optional, and interim final rules on October 13, 2017, at 82 FR 47838 (October 2017 Moral interim final rules), which created exemptions for entities and individuals who object to the contraceptive coverage requirement based on moral convictions, and provided these entities access to the accommodation process.

¹ In response to the Supreme Court decision, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 573 U.S. 682, 189 L. Ed. 2d 675 (2014), the July 2015 final rules allowed closely held for-profit companies to access the existing accommodation process.

- Final rules on November 15, 2018, at 83 FR 57536 (November 2018 Religious final rules), which finalized the expanded religious exemptions and optional accommodation process in the October 2017 Religious interim final rules, and final rules on November 15, 2018, at 83 FR 57592 (November 2018 Moral final rules), which finalized the new moral exemptions and optional accommodation process in the October 2017 Moral interim final rules. All nonprofit and closely held for-profit employers became eligible for religious exemptions, including private universities and colleges. These rules retained the existing accommodation process but rendered it optional.²

Lastly, this PRA package included several ICRs that have been removed from this information collection because the burden related to those ICRs are approved under 0938-1244 (Coverage of Certain Preventative Services Under the Affordable Care Act).

B. Justification

1. Need and Legal Basis

45 CFR 156.50(d)(2)(i)³ requires a participating issuer seeking an FFE (or SBE-FP) user fee adjustment to submit to HHS, in the year following the calendar year in which the contraceptive services for which payments were made under the accommodation described previously were provided, identifying information for the participating issuer, each third party administrator, and each self-insured group health plan, as well as the total dollar amount of the payments for contraceptive services that were provided during the applicable calendar year under the accommodation. Additionally, 45 CFR 156.50(d)(2)(iii) requires the third party administrator to submit to HHS identifying information for the third party administrator, the participating issuer, and each self-insured group health plan, as well as the total number of participants and beneficiaries in each self-insured group health plan during the applicable calendar year, the total dollar amount payments for contraceptive services, and an attestation that the payments for contraceptive services were made in compliance with 26 CFR 54.9815-2713A(b)(2) or 29 CFR 2590.715-2713A(b)(2). HHS requires this information to ensure that these FFE (or SBE-FP) user fee adjustments reflect payments for contraceptive services provided under this accommodation and the adjustment is applied to the appropriate participating issuer.

Finally, 45 CFR 156.50(d)(2)(ii) also requires third party administrators to submit to HHS a notification that the third party administrator intends for a participating issuer to seek an FFE (or SBE-FP) user fee adjustment, by the 60th calendar day following the date on which the

² 83 FR 57537-38.

³ The HHS Notice of Benefit and Payment Parameters for 2014 established the adjustment of exchange user fees at 45 CFR 156.50(d), 78 FR 15410 (March 11, 2013), and the HHS Notice of Benefit and Payment Parameters for 2022 (Part 2) clarified that SBE-FPs were also eligible for the adjustment, 86 FR 24140 (May 5, 2021).

third party administrator receives a copy of a self-certification from an eligible organization. The third party administrator is also required to submit the expected number of participants and beneficiaries for which it seeks the adjustment as part of this notification. HHS requires this information to determine the potential number of submissions provided by third party administrators in order to have the capacity to receive the previously mentioned submissions from applicable participating issuers and third party administrators in the applicable calendar year.

2. Information Users

HHS will use the data collections from participating issuers and third party administrators to verify the total dollar amount for such payments for contraceptive services provided under this accommodation for the purpose of determining a participating issuer's user fee adjustment. The attestation that the payments for contraceptive services were made in compliance with 26 CFR 54.9815-2713A(b)(2) or 29 CFR 2590.715-2713A(b)(2) will help ensure that the user fee adjustment is being utilized to provide contraceptive services for the self-insured plans in accordance with the previously noted accommodation.

3. Use of Information Technology

Participating issuers in the FFE (or SBE-FP) who seek a user fee adjustment and third party administrators with respect to which an FFE (or SBE-FP) user fee adjustment is received will submit and attest to the accuracy of the submission electronically. HHS has transitioned to a web form online tool to submit FFE (or SBE-FP) User Fee Adjustment data.

4. Duplication of Efforts

There is no duplication of efforts for these information collection requirements (ICRs).

5. Small Businesses

Small businesses are not affected by this collection.

6. Less Frequent Collection

If applicable participating issuers and third party administrators do not provide this information collection annually, the participating issuers will not receive a user fee adjustment in a timely manner, and participating issuers and third party administrators that make payments for contraceptive services under this accommodation will not be reimbursed for the cost of these services in a timely manner.

7. Special Circumstances

HHS requires third party administrators and participating issuers to maintain certain records with respect to the user fee adjustment for a period of ten years. Specifically, third party administrators are required to maintain (i) a copy of the self-certification provided by the eligible organization for each self-insured plan with respect to which a user fee adjustment is received, (ii) documentation demonstrating that the payments for contraceptive services were made in compliance with 26 CFR 54.9815-2713A(b)(2) or 29 CFR 2590.7152713A(b)(2), and (iii) documentation supporting the total dollar amount of the payments for contraceptive services submitted by the third party administrator. Additionally, participating issuers receiving an adjustment in the FFE (or SBE-FP) user fee under this section for a particular calendar year must maintain documentation demonstrating that it timely paid each third party administrator, with respect to which it received such adjustment any amount required under paragraph 45 CFR 156.50(d)(5). This timeframe is consistent with the statute of limitations under the False Claims Act and standards used for other Exchange programs.

8. Federal Register/Outside Consultation

The 60-day notice published in the Federal Register on May 26, 2022 (87 FR 32028). No comments were received. The 30-day notice published in the Federal Register on August 5, 2022 (87 FR 48032).

9. Payments/Gifts to Respondents

No payments or gifts will be provided to respondents.

10. Confidentiality

Privacy of the information provided in response to this collection will be protected to the extent provided by law.

11. Sensitive Questions

These information collections involve no sensitive questions.

12. Burden Estimates (Hours & Wages)

Average labor costs used in the burden estimates are calculated using data derived from the Bureau of Labor Statistics (including a 100 percent increase for fringe benefits and overhead)

for estimating the burden associated with the ICRs.⁴ Table 1 below presents the mean hourly wage, the cost of fringe benefits and overhead, and the adjusted hourly wage. As indicated, employee hourly wage estimates have been adjusted by a factor of 100 percent.

Table 12.1: Adjusted Hourly Wages used in Burden Estimate

Occupation Title	Occupation Code	Mean Hourly Wage Rate	Hourly Fringe Benefits and Overhead Rate	Adjusted Hourly Wage Rate
Insurance claims and policy processing clerk	43-9041	\$21.67	\$21.67	\$43.34
Lawyer	23-1011	\$71.59	\$71.59	\$143.18
Chief Executive	11-1011	\$95.12	\$95.12	\$190.24
Operations Manager	11-1021	\$60.45	\$60.45	\$120.90

Notification of Intent Submitted by TPAs (§147.131(d))

The July 2013 final rule requires TPAs to submit to HHS a notification that the TPA intends for a participating issuer to seek an FFE user fee adjustment with respect to the TPA for payments for contraceptive services, by the later of January 1, 2014, or the 60th calendar day following the date on which the TPA receives a copy of a self-certification from an eligible organization.

Consequently, assuming each self-insured eligible organization uses one TPA, we estimate that approximately 205 TPAs⁵ will be subject to this notification requirement. We estimate that each TPA will need approximately 30 minutes of an insurance claims and policy processing clerk (at \$43.34 per hour), which includes 5 minutes for record keeping, and 5 minutes of management review (at \$120.90 per hour) to submit this notification to HHS, resulting in a cost of \$31.75 per TPA. Therefore, for 205 TPAs, we assume an aggregate burden of approximately 120 hours and a total cost of approximately \$6,508.75 associated with this requirement.

Table 12.2: Estimated Annualized Burden for Notification of Intent to Seek User Fee Adjustment

Notice	Number of respondents	Number of responses	Total Estimated Annual Burden Hours	Total Estimated Annual Cost
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⁴ See May 2020 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates at https://www.bls.gov/oes/current/oes_stru.htm.

⁵ Estimates for non-issuer TPAs are based on data derived from the 2016 Benefit Year reinsurance program contributions.

Notification of Intent submitted by TPAs	205	205	120	\$6,508.75
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Collections for FFE User Fee Adjustment (§156.50(d))

Participating issuers seeking an FFE (or SBE-FP) user fee adjustment must submit to HHS, in the year following the calendar year in which the contraceptive services for which payments were made under the accommodation were provided, providing the following information: (A) identifying information for the participating issuer and each third party administrator that received a copy of the self-certification with respect to which the participating issuer seeks an adjustment in the FFE user fee (whether or not the participating issuer was the entity that made the payments for contraceptive services); (B) identifying information for each self-insured group health plan with respect to which a copy of the self-certification was received by a third party administrator and with respect to which the participating issuer seeks an adjustment in the FFE (or SBE-FP) user fee; and (C) for each such self-insured group health plan, the total dollar amount of the payments for contraceptive services that were provided during the applicable calendar year under the accommodation.

Based on past experience, HHS estimates that 280 issuers will participate in the FFE or SBE-FPs. We believe that those TPAs that also offer a QHP through the FFE are most likely to seek the user fee adjustment. However, we also recognize that not all of the 205 TPAs estimated above offer a QHP in the FFE. We currently estimate that 80 TPAs will participate in this program. Based on the administrative complexities of entering into these arrangements, we anticipate that some QHP issuers will seek the adjustment on behalf of multiple independent TPAs. We currently expect, based on past experience, that 40 QHP issuers in the FFE or SBE-FPs will seek the adjustment, and HHS intends to collect the required data elements for issuers to receive the FFE or SBE-FP user fee adjustment through a webform.

We estimate that each issuer will need approximately 3 hours of financial analysis by an actuary (at \$118.44 per hour), 5 hours of claims and policy processing by a clerk (at \$43.34 per hour, which includes 5 minutes for recordkeeping), 2 hours of work by legal counsel (at \$143.18 per hour), and 1 hour of review by a top executive (at \$190.24 per hour), and 5 minutes for a manager (at \$120.90) to submit to HHS through webform, resulting in a total estimate of \$1,058.70 per participating issuer. Therefore, for 40 QHP issuers, we assume the aggregate burden associated with this requirement is approximately 443 hours and approximately costs \$42,347.80.

Table 12.3 Estimated Annualized Burden of Collection of User Fee Adjustment Information from FFE Participating Issuers

Notice	Number of respondents	Number of responses	Total Estimated Annual Burden Hours	Total Estimated Annual Cost
Collection of User Fee Adjustment Information from FFE Participating Issuers	40	40	443	\$42,347.80

Notification Requirements for TPAs Receiving Payment under the Accommodation

TPAs are required to submit to HHS, in the year following the calendar year in which the contraceptive services for which payments were made under the accommodation were provided and provide the following information: (A) identifying information for the third party administrator and the participating issuer; (B) identifying information for each self-insured group health plan with respect to which the participating issuer seeks an adjustment in the FFE (or SBE-FP) user fee; (C) the total number of participants and beneficiaries in each self-insured group health plan during the applicable calendar year; (D) for each self-insured group health plan with respect to which the third party administrator made payments for contraceptive services, the total dollar amount of such payments that were provided during the applicable calendar year under the accommodation described previously (if such payments were made by the participating issuer directly, the total dollar amount should reflect the amount reported to the third party administrator by the participating issuer; if the third party administrator made or arranged for such payments, the total dollar amount should reflect the amount of the payments made by or on behalf of the third party administrator); and (E) an attestation that the payments for contraceptive services were made in compliance with 26 CFR 54.9815-2713A(b)(2) or 29 CFR 2590.715-2713A(b)(2).

Based on prior experience, HHS estimates that 80 TPAs will be subject to this collection. HHS estimated that each TPA will need approximately 5 hours of work by secretarial labor (at \$62.72 per hour, which includes 5 minutes for recordkeeping), 3 hours of financial analysis by an actuary (at \$118.44 per hour), 2 hours of work by legal counsel (at \$143.18 per hour), 1 hour of review by a top executive (at \$190.24 per hour), and 5 minutes of management work (at \$120.90) to submit the notification to HHS through webform, resulting in a total estimate of \$1,155.60 per TPA. Therefore, with 80 TPAs subject to this collection, we assume the aggregate burden associated with this requirement is approximately 887 hours and approximately costs \$92,447.60.

Table 12.4 Estimated Annualized Burden of Collection of User Fee Adjustment Information from Third Party Administrators

Notice	Number of respondents	Number of responses	Total Estimated Annual Burden Hours	Total Estimated Annual Cost
Collection of User Fee Adjustment Information from Third Party Administrators	80	80	887	\$92,447.60

13. Capital Costs

There are no capital costs associated with this collection.

14. Cost to the Federal Government

HHS staff will review the notification of intent submitted by a TPA, and the user fee adjustment information submitted by participating issuers and TPAs. We anticipate that a reviewer (at an hourly wage of \$86.38 for a Grade 12/Step 1 in the Washington, DC area) will need 18 hours to review the two information collections that apply to a total of 120 respondents (40 fully-insured issuers and 80 TPAs). We estimate that, throughout the year, two staff members (at an hourly wage of \$102.71 for a Grade 13/Step 1 in the Washington, DC area) will need 104 hours each to monitor and respond to questions from issuers and TPAs regarding this process. We also anticipate that five employees (at an hourly wage of \$102.71 for a Grade 13/Step 1 in the Washington, DC area) will need 60 hours each year to update webinars, FAQs, and the web portal for the annual data submission process. We estimate that an analyst (at an hourly wage of \$116.41 for a Grade 13/Step 5 in the Washington, DC area) will need 18 hours to process information received from TPAs that are receiving payment under the accommodation (approximately 80 TPAs) and calculate and apply the user fee adjustment to the FFE or SBE-FP user fee amount (for approximately 40 FFE and SBE-FP issuers). This includes the time to review and approve the information submitted under this collection. We also estimate that two analysts (at an hourly wage of \$102.71 for a Grade 13/Step 1 in the Washington, DC area) will each need 1 hour every month for internal data collection and analysis to track the user fee adjustments. Lastly, we note that contractor operations support costs total approximately \$30,000 annually. Therefore, accounting for an additional 100 percent for fringe benefits and overhead, we estimate the total annual cost to the federal government to be \$88,291.94 as a result of this requirement.

Table 12.5 Estimated Costs to Federal Government

Type of Federal Employee Support	Total Burden Hours per Reviewer (hours)	Total Reviewers	Hourly Wage Rate	Total Federal Government Costs
Review of Notifications of Intent (GS 12-1)	18	1	\$86.38	\$1,554.84
Inquiry Monitoring and Response (GS 13-1)	104	2	\$102.71	\$21,363.68
Annual Material Updates (GS 13-1)	60	5	\$102.71	\$30,813.00
Processing of User Fee Adjustment Information (GS 13-5)	18	1	\$116.41	\$2,095.38
Data Collection and Analysis (GS 13-1)	12	2	\$102.71	\$2,465.04
Contractor Operations Support Costs				\$30,000
Total	212	11		\$88,291.94

15. Changes to Burden

This revision includes a decrease in burden, with the total estimated issuer and TPA costs (Tables 12.2 through 12.4) falling from \$517,066.64 to \$134,795.40. Based on the past years of experience with the collection of the contraceptive user fee adjustment, we reduced the estimated number of participating issuers, from 48 to 40, and TPAs, from 488 to 80, which subsequently reduced the total number of burden hours. Wage rate estimates have also increased; therefore, costs per hour have been adjusted accordingly.

16. Publication/Tabulation Dates

The results of this data collection will not be made publicly available.

17. Expiration Date

The expiration date and OMB control number will display on the first page of each instrument (top, right corner).