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Office of Management and Budget (OMB)

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Subject: Supplementary Note to File (OMB# 0938-1429; CMS-10715)

This memo serves to clarify the designation of the information collection request (ICR) currently approved under 0938-1429 as a Sponsoring Common Form.

BACKGROUND

The Patient Protection and Affordable Care Act, Pub. L. 111-148, was enacted on March 23, 2010 and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, was enacted on March 30, 2010 (collectively, PPACA). PPACA 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 term group health plan includes both insured and self-insured group health plans. PPACA amends the PHS Act by adding section 2715A, providing that non-grandfathered group health plans and issuers offering group or individual coverage shall comply with section 1311(e)(3) of PPACA, which addresses transparency in health coverage and imposes certain reporting and disclosure requirements for health plans seeking certification as qualified health plans (QHP) that may be offered through the exchanges. Specifically, paragraph (A) of section 1311(e)(3) of PPACA requires a plan seeking certification as a QHP to make public nine data elements, including any "other information as determined appropriate by the Secretary of the Department of Health and Human Services (HHS)."[1] A plan or coverage that is not offered through an Exchange is required to submit the information required to the Secretary of HHS and the relevant state's insurance commissioner and make such information available to the public. Paragraph (C) of section 1311(e)(3) of PPACA requires plans to permit individuals to learn the amount of cost sharing (including deductibles, copayments, and coinsurance) under the individual's coverage that the individual would be responsible for paying, with respect to the furnishing of a specific item or service by an in-network provider, in a timely manner upon the request of the individual. Paragraph (C) specifies that, at a minimum, such information must be made available to the individual through an internet website and through other means for individuals without access to the internet.

On March 27, 2012, HHS issued a final rule that implemented sections 1311(e)(3)(A)-(C) of PPACA at 45 CFR 155.1040(a)-(c) and §156.220 and created standards for QHP issuers to submit specific information related to transparency in coverage. In the

preamble to the 2012 final rule, HHS noted that the standards set forth in that rule are, generally, strictly related to QHPs certified to be offered through an Exchange and not the entire individual and small group market. It was further noted that policies for the entire individual and small and large group markets would continue to be addressed in separate rulemaking issued by HHS, and the Departments of Labor and the Treasury (collectively referred to as "the Departments"). In the HHS 2020 Notice of Benefit and Payment Parameters (NBPP) proposed rule,[2] HHS sought input on ways to provide consumers with greater transparency with regard to their own health care data, QHPs offered through the Federally-facilitated Exchanges, and the cost of health care services. HHS additionally sought comments on ways to further implement section 1311(e)(3) of PPACA.

On June 24, 2019, President Trump issued Executive Order 13877, "Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First."[3] Section 3(b) of Executive Order 13877 directs the Secretaries of the Departments to issue an advance notice of proposed rulemaking (ANPRM), consistent with applicable law, soliciting comment on a proposal to require health care providers, health insurance issuers, and self- insured group health plans to provide or facilitate access to information about expected out-of- pocket costs for items or services to patients before they receive care.

To fulfill the Departments' responsibilities under Executive Order 13877, as well as to implement legislative mandates under section 1311(e)(3) of PPACA and section 2715A of the PHS Act, on November 27, 2019, the Departments published a Notice of Proposed Rulemaking (NPRM) entitled "Transparency in Coverage" (84 FR 65464) in the Federal Register.

On November 12, 2020, the Departments published the "Transparency in Coverage" final rules (85 FR 72158) in the Federal Register.

This ICR was last approved by OMB on August 19, 2022, and expires August 31, 2025.

NOTE TO FILE

The purpose of this submission is to establish the information collection request currently approved under 0938-1429 as a Sponsoring Common Form. During the associated rulemaking (85 FR 72158) as well as in the subsequent submission to OMB, the ICR explicitly stated that it would be using the Request for Common Form (RCF) process. Once approved, the Departments would submit RCFs for their respective Departments. Due to an administrative oversight, CMS did not submit 0938-1429 as an ICR sponsoring a common form. With this submission we are correcting the oversight. We note that no changes have been made to the ICR, that is, no new requirements, no removed requirements, no additions or deletions to the respondent populations and no changes to time or cost burden. Two formatting changes were made to the supporting statement document. The supporting statement has been retitled to contain the correct OMB control number and the file was converted from a PDF file to a Word file.