

Supporting Statement – Part A

Limit on Federal Financial Participation for Durable Medical Equipment in Medicaid

CMS-10661, OMB 0938-New

BACKGROUND

In order to implement section 503 of the Consolidated Appropriations Act, 2016 and section 5002 of the 21st Century Cures Act of 2016, where Congress added section 1903(i)(27) to the Social Security Act (the Act), which prohibits federal Medicaid reimbursement to states for certain durable medical equipment (DME) expenditures that are, in the aggregate, in excess of what Medicare would have paid for such items, we formulated a State Medicaid Directors' Letter (SMDL) in order to comply with the statute. The statute takes effect January 1, 2018, for reporting by the states. In order for states to comply with the statute, we will need them to demonstrate that the states are not spending in excess of what Medicare would have paid for the relevant DME items.

We propose the minimal amount of information be collected from states to comply with this statute. We will ask the states to demonstrate compliance by filling in their DME fee schedules onto the attached spreadsheet page with the relevant information- HCPCS code series A, K, & E only, that are relevant to this information collection of durable medical equipment. The fee schedule information should also include all relevant modifiers for the codes, descriptors for these codes, Medicaid fee schedule rates, and the claims volume for each unique combination of the codes for the federal fiscal year all submitted annually. We understand that most states use Medicare's coding system, but some states develop their own coding system, and this needs to be explained. We would also need the definitions of the state modifiers, if not using the Medicare coding modifiers.

We will use this information to calculate compliance with the statute using a data tool we developed that includes the annual DME pricing schedules from Medicare.

A. JUSTIFICATION

1. Need and Legal Basis

The legal basis for the collection of information comes from Section 503 of the Consolidated Appropriations Act, 2016 and section 5002 of the 21st Century Cures Act of 2016, where

Congress added section 1903(i)(27) to the Social Security Act (the Act), which prohibits federal Medicaid reimbursement to states for certain durable medical equipment (DME) expenditures that are, in the aggregate, in excess of what Medicare would have paid for such items.

Effective January 1, 2018, the statute requires a limit to available FFP for state Medicaid fee-for-service expenditures for DME, per Section 1903(i)(27) (text is copied below). The limit is calculated in the aggregate to the amount that Medicare would **have** paid for the same items through the Medicare DMEPOS fee schedule, or, as applicable, the Medicare competitive bidding program. The statute specifically applies to items of durable medical equipment that are covered by both Medicare and Medicaid, and does not limit Medicaid's ability to provide DME that is not covered by Medicare. It does not include prosthetics, orthotics, or supplies. The statute also does not mandate that states pay Medicare rates for all Medicaid DME.

We suggest that states look at their Medicaid DME payment amounts and claims to determine if setting payment rates at or below the Medicare amount is a reasonable approach for compliance. States doing this will be exempt from this Collection of Information. If states do not set rates at or below the Medicare amount, using instead a Medicaid fee schedule for instance, states will need to develop an aggregate expenditure demonstration and will need to fill in the State Fee Schedule Drop spreadsheet in this Collection of Information to ensure compliance with the statute.

(27) with respect to any amounts expended by the State on the basis of a fee schedule for items described in section 1861(n) and furnished on or after January 1, 2018, as determined in the aggregate with respect to each class of such items as defined by the Secretary, in excess of the aggregate amount, if any, that would be paid for such items within such class on a fee-for-service basis under the program under part B of title XVIII, including, as applicable, under a competitive acquisition program under section 1847 in an area of the State.

2. Information Users

We, the Center for Medicaid and CHIP Services, Financial Management Group, Division of Reimbursement and State Finance, will compile the required information from the states via e-mail. We will ask the states to demonstrate compliance by filling in their DME fee schedules onto the attached spreadsheet page with the relevant information- HCPCS code series A, K, & E only, that are relevant to this information collection of DME. The fee schedule information should also include all relevant modifiers for the codes, descriptors for these codes, Medicaid fee schedule rates, and the claims volume for each unique combination of the codes for the federal fiscal year all submitted annually. We understand that most states use Medicare's coding system, but some states develop their own coding system, and this needs to be explained. We would also need the definitions of the state modifiers, if not using the Medicare coding modifiers.

We will use this information to calculate compliance with the statute using a data tool we developed that includes the annual DME pricing schedules from Medicare. This data tool will

help determine compliance with the statute by calculating the allowable expenditures in Medicare and comparing them to the aggregate Medicaid expenditures for the relevant DME items. States will be in compliance with the statute as long as the Medicaid expenditures do not exceed the Medicare expenditures for the same number and type of DME.

3. *Use of Information Technology*

This collection of information will be via the accompanying spreadsheet that is emailed to us using a central email address. The information for this spreadsheet will come from existing state DME fee schedules with the relevant information- HCPCS code series A, K, & E only, that are relevant to this information collection.

No signature is required from the states.

4. *Duplication of Efforts*

Many states publish their fee schedules online, however, in order to ensure compliance with this statute, the relevant modifiers and total annual claims volume for each code and each state are needed to calculate the aggregate Medicaid expenditures and compare them with the aggregate Medicare expenditures for each code, which includes claims volume.

Therefore, this information collection does not duplicate any other effort and the information cannot be obtained from any other source.

5. *Small Businesses*

There is no impact on small businesses for this collection of information.

6. *Less Frequent Collection*

If this collection of information did not occur or was collected less frequently than at least annually, there would be no way of assuring state Medicaid programs were in compliance with this statute of expending no more than the aggregate amount that Medicare would on the relevant DME.

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/Outside Consultation*

Federal Register

Outside Consultation

We discussed this collection of information with various state Medicaid agencies and tested publicly available DME fee schedules with our data tool, prior to creating the spreadsheet for this collection of information. We determined the minimal data needed for this collection of information and included it in the spreadsheet template.

9. *Payments/Gifts to Respondents*

There are no payments or gifts to respondents in this collection of information.

10. *Confidentiality*

This collection of information will be made to us from each state, there will not be any confidentiality of the data collected in order to show compliance with this statute.

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 Estimates (Hours & Wages)

Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2016 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/current/oes_nat.htm). In this regard, Table 1 presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE 1: National Occupational Employment and Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefit (\$/hr)	Adjusted Hourly Wage (\$/hr)
Data Entry Keyers	43-9021	15.21	15.21	30.42
Social Science Research Assistants	19-4061	22.51	22.51	45.02

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, there is no other practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method

Burden Estimates

We will ask the states to demonstrate compliance by filling in their Medicaid specific DME fee schedules onto the attached spreadsheet page with the relevant information- HCPCS code series A, K, & E only, that are relevant to this information collection of durable medical equipment. The fee schedule information should also include all relevant modifiers for the codes, descriptors for these codes, Medicaid fee schedule rates, and the claims volume for each unique combination of the codes for the federal fiscal year all submitted annually. We understand that most states use Medicare's coding system, but some states develop their own coding system, and this needs to be explained. We would also need the definitions of the state modifiers, if not using the Medicare coding modifiers. However, not all states will have to complete this spreadsheet.

States that pay the same as Medicare or some percentage at or lower than 100% of the Medicare fee schedule or its equivalent, will not have to complete this fee schedule spreadsheet. We do not know how many states will be exempt from these requirements, so we will assume that the burden will fall on all 50 states, the District of Columbia, and potentially all 5 territories, for a total of **56 entities**, hereafter referred to simply as states.

We estimate that each state that is required to complete the fee schedule spreadsheet, will complete the collection of information and submit to us by email in **8 hours** for the initial year, and within **8 hours** for each subsequent reporting year. This includes the requirements for states to submit a fee schedule spreadsheet within six months after the end of each federal fiscal year, for the prior year.

The 8 hour estimate takes into account the time to convert the fee schedule into a spreadsheet format that will be submitted to us for analysis in a data tool to ensure compliance with the statute and time for a more senior person to review the submission before submitting this to us.

Of those 8 hours, we expect a Data Entry Keyer would need no more than 7 hours at \$30.42/hr to complete the initial and subsequent years of data transfer of the relevant fee schedules into the provided data spreadsheet, complete with codes and descriptors, as previously stated and transfer those to us. A Social Science Research Assistant would need no more than 1 hour at \$45.02/hr to review the initial and subsequent year spreadsheets before submitting them to us. The overall burden would therefore be **448 hours** [56 respondents x (7 hr Data Entry Keyer) + (1 hr Social Science Research Assistant)] at a cost of **\$14,445.76** (56 respondents x [(7 hr x \$30.42/hr) + (1 hr x \$45.02/hr)] or \$257.96 per state/territory (\$14,445.76/56 respondents).

Collection of Information Instruments and Instruction/Guidance Documents

- State Fee Schedule Drop (Spreadsheet)
- State Fee Schedule Drop (Spreadsheet) Instructions

13. Capital Costs

Any data under this collection of information should not require additional capital costs beyond the normal business of running the state's Medicaid program and to achieve regulatory compliance with requirements not associated with this information collection.

14. Cost to Federal Government

We estimate the following burden and costs to the federal government for this collection of information, from 56 entities.

20/10 hours – 20 hours to complete the initial PRA package, and then 10 hours every 3 years to renew the PRA package.

40 hours – The initial creation of the data tool and testing of the data tool, to ensure states are compliant with the statute.

80 hours – To review the 56 states’ reporting per year, including analyzing the data submitted to us and imputing this into the data tool to determine compliance with the statute.

40 hours – To train states in the use of the spreadsheet to submit their data to us, including time to correspond to states and answer queries each year.

In summary this would mean a total burden for this initial PRA package and 3 year approval of the following number of hours:

Table 2: Total Hours per Year for Information Collection

	Year 1	Year 2	Year 3
Completion of PRA package for OMB	20	0	10
Initial creation of the data tool	40	0	0
Analyzing submitted data from states	80	80	80
Training/Corresponding with states	40	40	40
Total Hours per Year	180	120	130

We estimate these tasks would be completed in the HHS office of CMS/CMCS/FMG/DRSF by a GS-13, step 5 with an annual salary of \$107,435, and an hourly rate of \$102.96 (see below). In terms of monetary burden, we estimate it would cost the federal government a total of \$44,272.80 for the first three years of this collection of information, for an average of \$14,757.60 per year.

Table 3: Burden to the Federal Government

Year	Hours	Wage	Burden
1	180	\$102.96	\$18,532.80
2	120	\$102.96	\$12,355.20
3	130	\$102.96	\$13,384.80
			\$44,272.80

To derive average costs for a GS-13, step 5, we used data from The Office of Personnel Management (OPM) 2017 General Schedule salary calculator (<https://www.opm.gov/policy-data->

[oversight/pay-leave/salaries-wages/2017/general-schedule-gs-salary-calculator/](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule-gs-salary-calculator/) for annual salaries & https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB_h.pdf for hourly salaries). In this regard, Table 1 presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

Table 4: Office of Personnel Management (OPM) 2017 General Schedule salary calculations

Occupation Title	Federal Job Series	Mean Hourly Wage (\$/hr)	Fringe Benefit (\$/hr)	Adjusted Hourly Wage (\$/hr)
GS-13 Step 5 - Health Insurance Specialist	0107	51.48	51.48	102.96

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, there is no other practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

In terms of capital costs, there should be no extra capital costs in this collection of information other than the general capital costs of the Division to run its daily operations supporting the Medicaid program.

15. *Changes to Burden*

Non-applicable. This is a new collection.

16. *Publication/Tabulation Dates*

For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The data collected in this collection of information will not be published.

We plan on collecting this data starting after the end of each federal fiscal year (i.e., October 1) and all data will need to be submitted by 6 months after the end of each federal fiscal year (i.e., April 1) for the previous federal fiscal year, in order to show compliance with the statute.

17. *Expiration Date*

The expiration date is displayed.

18. *Certification Statement*

Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

We are not seeking any exceptions.

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

This collection of information request does not employ the use of any statistical methods.