

# **Supporting Statement for the Collection of State Medicaid Fraud Control Units' Reports as Required by 42 CFR § 1007.15 and 42 CFR § 1007.17**

## **Background**

The Office of Inspector General (OIG) is requesting Office of Management and Budget (OMB) approval for the collection of information to comply with the requirements in Title XIX of the Social Security Act at 1903(q), 42 CFR § 1007.15, and 42 CFR § 1007.17, in accordance with the Paperwork Reduction Act. The information collected consists of 50 separate annual reports and 50 separate application requests for certification/recertification of State Medicaid Fraud Control Units (MFCU or Unit). The collection is required by the statute and submitted yearly to OIG by the 50 MFCUs. OIG uses the information collected to determine the MFCUs' compliance with Federal requirements and eligibility for continued Federal financial participation (FFP) under the Federal MFCU grant program.

## **A. Justification**

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

Public Law 95-142, the Medicare-Medicaid Anti-Fraud and Abuse Amendments, was enacted in 1977 to strengthen the capabilities of Federal and State governments to combat and eliminate fraud and abuse in Medicaid, through the establishment of the MFCUs. This law amended section 1903 of the Social Security Act to establish operating requirements for MFCUs and provide FFP to State governments for the cost of establishing MFCUs, training State personnel, and keeping the MFCUs operational.

Under section 1903(q)(7), each MFCU must annually submit to the Secretary of Health and Human Services (Secretary) an application and annual report containing information that the Secretary determines is necessary to certify the MFCU as meeting the requirements for FFP. FFP is available only for activities directly related to the investigation and prosecution of health care providers suspected of committing Medicaid fraud. The MFCUs also review complaints of alleged abuse or neglect of patients and the misuse of patients' personal funds in health care facilities. OIG reviews the information collected to ensure that Federal matching funds are expended by MFCUs only for allowable costs. In addition, OIG analyzes each MFCU's submission to determine whether there is a need for OIG technical assistance and to establish priorities for onsite reviews to further monitor program activities.

### **2. Information Users**

OIG uses the information to measure the efficiency and effectiveness of MFCUs and to evaluate funding and budget decisions made by each MFCU.

### **3. Improved Information Technology**

No other methods are available, from a technology standpoint, to assess the MFCUs' efforts to combat and eliminate fraud and abuse in Medicaid.

### **4. Duplication of Similar Information**

This collection does not duplicate other data collection efforts.

### **5. Small Business**

The yearly collection of the annual reports and certification/recertification application requests from the State MFCUs have no relationship to small business.

### **6. Less Frequent Collection**

Section 1903(q) of the Act, and implementing regulations at 42 CFR §§ 1007.15 and 1007.17, require that each MFCU submit an annual application for recertification and an annual report with information necessary to determine whether the Unit meets Federal requirements for FFP. Without this particular information collection, a decision to recertify the MFCU as eligible to continue to receive Federal matching funds cannot be finalized.

### **7. Special Circumstances**

No special circumstances are involved in this collection of information. The OIG requirement that the MFCUs collect this information is in full compliance with law and regulations.

### **8. Federal Register Notice/Outside Consultation**

A 60-day notice for extension of the MFCU annual reporting requirement was published in the *Federal Register*, Vol. 78, No. 207, page 63980 on Friday, October 25, 2013. No public comments were received. The MFCU annual report is approved through January 31, 2014, under OMB No. 0990-0162.

### **9. Payment/Gift to Respondent**

No such payments or gifts are foreseen to the respondents, and none have been given.

### **10. Confidentiality**

The contents of the collection contains no personal identifying information regarding individuals, such as a Social Security number, home address, or other identifiable information. Regulations at 42 CFR § 1007.11(f) require that the MFCUs safeguard the privacy of all individuals and provide safeguards to prevent the misuse of information under MFCU control. In accordance with the principles of the Freedom of Information Act (FOIA), 5 U.S.C. 552, OIG will adhere to all applicable rules and provisions in the FOIA to which the contents of the collection are subject.

## **11. Sensitive Questions**

Statutory and regulatory reporting requirements pertaining to the program do not require the Secretary (as delegated to OIG) to ask questions of a sensitive nature to make certification and funding decisions relating to the MFCUs.

## **12. Burden Estimate (Total Hours and Wages)**

The collection must contain certain mandatory information as outlined at 42 CFR § 1007.15 and 42 CFR § 1007.17, but the format and extent of each MFCU submission to OIG is determined by the respective MFCU. In preparing a MFCU's annual report and required certification/recertification application for submission to OIG, a MFCU supervising official spends approximately 64 hours at an estimated \$30 per hour to formulate narrative statements and descriptions of MFCU procedures and accomplishments, promulgate and confirm agreements, address and resolve all budgetary issues, guide Unit support staff, and confer with other State officials. A MFCU support staff member spends approximately 29 hours of effort at an estimated hourly rate of \$12 per hour to develop draft products, fulfill data processing activities, complete all required administrative functions, and confer with the MFCU supervising official, all of which are necessary to finalize the collection for submission to OIG. Based on these estimated hours and staff wage rates, the weighted average wage rate is \$24.39 per hour. About 93 burden hours are expended by each of the 50 MFCUs. In addition, OIG now permits MFCUs, under conditions specified in 42 CFR § 1007.20, to engage in data mining activities. MFCUs engaging in data mining activities are required to report on those activities in the annual report. We estimate that preparing the additional information on data mining activities would take 1 hour per year. We arrived at that estimate after consulting with Florida's MFCU, which since 2010 has had an 1115 MEDS AD demonstration waiver to conduct data mining. Therefore, we estimate that the total burden of preparing the annual report for a Unit participating in data mining to be 94 hours per year. Further, in consultation with the CMS/Office of the Actuary, OIG estimates that a "medium" level of State MFCUs, defined as 25 percent of MFCUs or 13 Units, will participate in data mining activities. Hence, with an estimated 13 Units participating and 1 hour required to prepare the additional data mining information needed for the annual report, we have added 13 hours to the total burden hours in tables 12A and 12B. The estimates shown in the tables below (12A and 12B) were derived

from three primary sources: (1) available budget and other information that OIG maintains on each of the 50 MFCUs, (2) relative information that the MFCUs routinely furnish to OIG, and (3) assumptions on MFCU participation in data mining activities generated in consultation with the CMS/Office of the Actuary. In the case of a MFCU applying to the Medicaid fraud grant program for the first time, the burden hours and associated costs would likely double.

*12A. Estimated Annual Burden Hours*

Respondent	Form	Number of Respondents	Number of Responses per Respondent	Average Burden per Response (in hours)	Total Burden Hours
MFCU	Annual Report	50	1	88	4,400
MFCU, estimating a “medium” <sup>1</sup> level of State participation in data mining activities	Annual Report, data mining reporting only.	13	1	1	13
MFCU	Recertification Application	50	1	5	250
<b>Total</b>		50	2 <sup>2</sup>	94	<b>4,663<sup>3</sup></b>

*12B. Estimation of Annualized Cost to Respondents*

Respondent	Form	Total Burden Hours	Weighted Hourly Wage Rate	Total Respondent Cost
MFCU	Annual Report	4,400	\$24.39	\$107,316
MFCU, if participating in data mining activities	Annual Report, data mining reporting only.	13	\$24.39	\$317
MFCU	Recertification Application	250	\$24.39	\$6,098
<b>Total</b>		4663	\$24.39	\$113,731

**13. Capital Costs (Maintenance of Capital)**

<sup>1</sup> For medium participation, we estimate 25 percent of the 50 MFCUs participating, or 13 Units.

<sup>2</sup> The Units not participating in data mining would have 2 responses; the estimated 13 Units participating in data mining would have 3 responses.

<sup>3</sup> Since we estimate 13 Units participating in data mining at an estimated 1 extra burden hour each, we added 13 hours to the total hours. As such, the total burden hours are the sum of all burden hours,

No maintenance of capital costs are associated with this collection.

**14. Cost to Federal Government**

The annual cost to the Federal government of processing the collection for each of the 50 MFCUs is based on the average time OIG staff takes to thoroughly review and analyze the information in each collection, as well as the time it takes to consult with MFCU officials and their staff, if appropriate. The number of participating OIG staff is 4. OIG staff takes 3 hours for each review. The estimated wage rate for OIG staff is \$32–\$40 per hour—an average of \$36 per hour. Based on this data, the average annual cost to the Federal Government for collection is approximately \$5,400. The hourly wage rate information was derived from personnel-payroll data. The figure used for OIG staff processing time was obtained from the participants.

**15. Program or Burden Changes**

OIG now permits MFCUs, under conditions specified in 42 CFR § 1007.20, to engage in data mining activities. MFCUs engaging in data mining activities are required to report on those activities in the annual report. We estimate that preparing the additional information on data mining activities would take 1 hour per year. If 25 percent of the 50 MFCUs participate (13 units x 1 burden hour per year), we anticipate 13 additional burden hours a year.

**16. Publication and Tabulation Dates**

OIG does not publicize information submitted in annual reports or certification/recertification application requests. Since these collections could include information concerning State and Federal ongoing investigations and prosecutions, such information must be requested through FOIA channels, disclosed only on a case-by-case basis and only after a thorough FOIA review.

**17. Expiration Date**

This section is not applicable.

**18. Certification Statement**

No exceptions to the certification exist.

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

No statistical methods are employed in relation to the information collected.