

**Office for Civil Rights
Civil Rights Information Request
For Medicare Certification
OMB 0945-0006**

U.S. Department of Health and Human Services
Office of the Secretary
Office for Civil Rights
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Room 509F HHH Bldg.
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Supporting Statement: Civil Rights Information Request Form

A. Justification

1. Circumstances Making the Collection of Information Necessary

The Centers for Medicare and Medicaid Services (CMS) require health care providers to meet certain legal requirements in order to participate in the Medicare Part A program established by Title XVIII of the Social Security Act. Those legal requirements include ensuring that health care providers receiving Federal financial assistance from the Department of Health and Human Services do not deny benefits or services to qualified persons based on race, color, national origin, disability, age or sex. OCR conducts reviews of such providers to determine compliance with the requirements of the following statutes and regulations:

- Title VI of the Civil Rights Act of 1964 (Title VI) Pub.L. 88-352, 42 U.S.C. Section 2000d-1 et seq., and its implementing regulation, Title 45 Code of Federal Regulations (CFR) Part 80, which prohibit discrimination on the grounds of race, color, or national origin by recipients of Federal financial assistance. This encompasses the requirement for recipients to take reasonable steps to provide meaningful access to persons who are limited English proficient (LEP). See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311 (2003).
- Section 504 of the Rehabilitation Act of 1973 (Section 504), Pub.L. 93-112, as amended by Pub. L. 93-516, 29 U.S.C. Section 794, and its implementing regulation, Title 45 CFR Part 84, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. This encompasses the requirement for recipients to provide auxiliary aids and services to persons with disabilities.
- Age Discrimination Act of 1975, Pub. L. 94-135, 42 U.S.C. Section 6101 et seq., and its implementing regulation, Title 45 CFR Part 91, which prohibit discrimination on the basis of age by recipients of Federal financial assistance.

2. Purpose and Use of Information Collection

To ensure adherence to the statutory requirements listed above, compliance reviews are requested when health care providers, such as hospitals, nursing homes and home health agencies, apply to participate in the Medicare Part A program. When a provider seeks Medicare certification, OCR conducts a compliance review to determine whether the provider will be able to comply with Title VI, Section 504, and the Age Discrimination Act. Such reviews are an effective means of working with health care providers because potential civil rights concerns can be identified prior to receipt of Federal financial assistance. The technical assistance available to recipients on the OCR website helps providers take steps to comply with their obligations to refrain from prohibited discrimination.

This approach is efficient and practical because it promotes voluntary compliance, while decreasing the need for more in-depth Federal complaint investigations and compliance reviews that impose greater costs, both on the recipient and on OCR.

The information received from the facility provides OCR with a basic understanding of how the program is administered. OCR conducts an analysis addressing the following requirements:

Assurance of Compliance. 45 CFR 80.4(a), 45 CFR 84.5 and 45 CFR 91.33 require that an assurance of compliance (Form HHS-690) be submitted, which states that the facility will comply with all the requirements of the aforementioned statutes and their implementing regulations.

Policies of Nondiscrimination. 45 CFR 80.6(d), 45 CFR 84.8, and 45 CFR 91.32 require that the facility have a written policy of nondiscrimination on the basis of race, color, national origin, disability, age, and sex. Because the regulations requiring dissemination of such policies vary according to the particular regulatory authority, the provider is referred to a link to the specific regulations, and provided with a sample Nondiscrimination Policy.

Language Assistance. 45 CFR 80.3(b)(2) prohibits the provider from utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin. This encompasses the requirement for recipients to take reasonable steps to provide meaningful access to persons who are limited English proficient

(LEP). See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311 (2003). The guidance recommends that facilities, in describing the language assistance measures to be used to ensure effective communication between providers and LEP persons, review the number of LEP persons in their service areas, the frequency of contact with LEP persons, the nature of services provided and the costs and resources available to the facilities. It further explains that these factors should be considered for both oral and written communication with LEP persons. The provider is provided with a sample Policy for Communication with Persons with Limited English Proficiency.

Auxiliary Aids. 45 CFR 84.52(d) requires the facility to provide auxiliary aids to persons with impaired sensory, manual or speaking skills, where necessary to provide such persons an equal opportunity to benefit from the service in question. The provider is provided with a sample Policy for Auxiliary Aids and Services for Persons with Disabilities, and a sample Section 504 Notice of Program Accessibility.

Section 504 Data. 45 CFR 84.7 requires facilities that employ 15 or more persons to designate a responsible employee to coordinate compliance with the Section 504 regulation; further the facility must provide a copy of its grievance procedure for handling disability discrimination grievances. The provider is provided with a sample Section 504 Grievance Procedure.

Age Distinctions. 45 CFR 91.31 requires the facility's policies and practices to be free from restrictions of services based on age, and an explanation must be provided concerning any exceptions/exemptions that may apply.

The benefits of the civil right compliance review investigation process include:

- Increased recipient awareness and cooperation. The compliance review enables recipients to establish appropriate policies and procedures or correct potential noncompliance in a voluntary context. Because of the self-corrective and direct technical assistance nature of the compliance review, OCR's experience has been that recipients are generally cooperative and view the activity as an informative and positive step that can help them avoid potential civil rights compliance concerns in the future.
- Working with Medicare providers during a compliance review, OCR can develop on-going relationships that can have residual positive results in service delivery and marketing among other business groups. For example, once recipient agencies have contacted and worked

cooperatively with groups representing persons with disabilities, the agencies are more likely to seek help from these groups if they subsequently need assistance in resolving compliance problems. This cooperative working relationship can enhance compliance and forestall formal complaints to OCR.

- **Reduced Provider Burden.** In conducting a complaint investigation or compliance review of a health care or social service provider, OCR determines whether a compliance review has already been performed by OCR. In many instances, the procedure decreases the burden on the recipient since the compliance review and corrective actions, as necessary, may reduce or eliminate the need for a formal investigation involving interviews, examination of records, collection and submission of data associated with issues already addressed through a recent compliance review certification process.
- To further reduce provider burden in completing the compliance review process, OCR has developed over 50 Civil Rights Corporate Agreements with health care corporations. These Agreements are designed to expedite the civil rights compliance review process by implementing a practice whereby all of a corporation's national policies and procedures are reviewed and approved at OCR's headquarters' level. Subsequent to such approval, only local facility-specific information is reviewed by OCR for civil rights compliance during the review process.

3. Use of Improved Information Technology and Burden Reduction

OCR currently provides a website <http://www.hhs.gov/ocr/civilrights/clearance/index.html> that allows covered entities immediate access to the civil rights information request package and technical assistance material. Providing ready access to technical assistance to recipients in completing the compliance review has served to both encourage compliance and avoid circumstances in which providers deploy measures that might be less effective and more costly than necessary to achieve compliance.

4. Efforts to Identify Duplication and Use of Similar Information

The information requested is not otherwise available. Title VI, Section 504, and the Age Discrimination Act do not otherwise require generation or production of nondiscrimination policies and procedures on the basis of race, color, national origin, disability, age, and sex for submission to any other Federal entity or authority.

5. Impact on Small Business or other Small Entities

The civil rights compliance review imposes a lesser burden on small providers than on larger HHS recipients, since generally, the smaller the provider and the fewer services provided, the narrower the scope of inquiry will be in conducting a compliance review.

6. Consequences of Collecting the Information in Less Frequent Collections

If the compliance review collection of relevant information is not conducted, OCR cannot ensure that a Medicare Part A participating facility will be in compliance with applicable HHS nondiscrimination statutes and regulations. As described above, a compliance review results in increased recipient awareness and cooperation and reduces or potentially may eliminate the need for a formal investigation, thus reducing the potential provider burden that may result if OCR has to conduct a complaint investigation or compliance review. This is a single time request of the healthcare providers (when they apply for Medicare Part A certification or re-certification), for record keeping.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

None.

Recordkeeping Requirements: Records produced in conjunction with the data request, such as a provider's Assurance of Compliance (Form 690), non-discrimination and other civil rights policy statements, Section 504 Grievance Procedures, and procedures for effective communication with persons of limited-English proficiency, are usually items only 1-3 pages in length and are maintained in the normal course of business.

8. Comments in Response to the Federal Register Notice

For Federal Register Notice information, see the OS Certification Form.

In preparing the original 2000 compliance data request form, OCR consulted with Department of Labor officials concerning a pre-inquiry activity their agency conducts which is similar to the OCR compliance review process. DOL's input was very helpful in deliberations about the administration of OCR's pre-grant review program.

In addition, OCR consulted with several health care provider organizations at corporate and local levels in preparing the 2010 and 2014 civil rights compliance data request forms. The purpose of the consultation was to obtain their direct input on burden estimates to respond to our pre-grant compliance review data request. As we anticipated, comments were diverse depending on the complexity of the health care entity represented. One organization made specific mention that the Corporate Agreements for processing the reviews expedited the process immensely.

In preparing the 2000 pre-grant request form, OCR also consulted with John Hopkins University, Florida Developmental Disabilities Association, Arizona Developmental Disabilities Association, the Office of the Mayor of New York City, the Commonwealth of Virginia and many other institutions, organizations and agencies representing persons with disabilities. In addition, in preparing this revision, OCR has been able to rely on ongoing consultation and technical assistance opportunities with potential recipients.

9. Explanation of any Payment/Gift to Respondents

There is no payment/gift to respondents.

10. Assurances of Confidentiality Provided to Respondents

There is no request for any confidential or private information regarding patients or any specific individual. The form only requests information regarding healthcare providers' policies and procedures for ensuring equal access to their services.

11. Justification for Sensitive Questions

There are no sensitive questions. There is no request for any confidential or private information regarding patients or any specific individual. The form only requests information regarding healthcare providers' policies and procedures for ensuring equal access to their services.

12. Estimates of Annualized Hour and Cost Burden

Type of Respondent	No. of Respondents	No. of Responses Per Respondent	Average Burden per Response (in hours)	Total Burden Hours

Healthcare Providers	2900	1	8	23,200
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Recipients subject to compliance reviews vary greatly in size, and many provide specialized or limited health services. The complexity of the compliance review and the amount of time needed for completion is greater for those facilities providing a wider range of services.

We estimate that it would take an average of 8 hours per respondent to complete the data request with a range of 4 hours to 15 hours, largely dependent on the size of the facility and types of services provided. This estimate is based on empirical data. Based on discussions with the respondents and on our experiences in conducting other regulatory data requests, OCR's regional staff was able to provide a range of hours that it takes to complete the data request. An average of the range of hours based on the mix of respondents was computed to arrive at the average estimate of hours per respondent.

During the last ten years, the number of compliance reviews has varied, ranging from 2,200 to 3,800 per year. Based on our experience of the past five years, OCR projects that it will process a total workload of approximately 2,900 compliance reviews each year for the next three fiscal years. We are requesting a three year approval for this activity, and the following annual information for new recipients is based on flat projections for FY 2011-FY 2014:

12A. Estimated Annualized Burden Hours

Type of Respondent	Form Name	No. of Respondents	No. of Responses per Respondent	Average Burden per Response (in hours)	Total Burden Hours
Health care providers	Civil Rights Information Request for Medicare Certification	2900	1	8	23,200

The total respondent costs of \$1,090,400 (for 2900 health care providers) is calculated based on the average salaries of three categories of health care workers (i.e., medical and health services managers, registered nurses, and all other health professionals, para-professionals and technicians). These categories are representative of those who would be responding to the data request. The salaries were taken from the Bureau of Labor Statistics (BLS) Occupational Employment Statistics for 2008 and adjusted for inflation. Using the average of salaries for these three categories of workers, both benefits and overhead costs were added based on the Office for Civil Rights' (OCR) own budget experience. The hourly cost to health care providers, therefore, is based on salaries adjusted for inflation plus benefits and overhead charges. This is the same cost allocation method that OCR has used to estimate the government cost of this collection.

13. Estimates of other Total Annual Cost Burden to Respondents

There is no startup cost.

14. Annualized Cost to Federal Government

The government annualized cost estimate of \$1,280,000 is based on the proportion of the Office for Civil Rights' (OCR) compliance staff time estimated as being allocated to compliance reviews for work during FY 2010. This means that, given the annual workload of 2,900 compliance reviews of health care providers, the estimated government average cost of one review of one health care provider is \$441.37. The allocation of investigative time is based on the relative number of hours required to complete each type of OCR compliance activity (e.g., complaints, post-grant reviews, outreach and compliance reviews). OCR's budget estimates that just over 4 percent of compliance staff time is allocated to compliance reviews. Based on the salaries and benefits for compliance staff and OCR's associated overhead, OCR has estimated the total funds allocated to conduct compliance reviews.

15. Explanation for Program Changes or Adjustments

This collection is an adjustment change for two reasons: (1) the average burden hours per health care provider has been reduced from 15 to 8 because of the addition of web links to the regulatory requirements and sample policies; and (2) because our estimate of the number of respondents is lower than in our 2700 request.

16. Plans for Tabulation and Publication and Project Time Schedule

There is no project time schedule.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

It is appropriate to display the OMB expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to certification.

Attachments

- A. Civil Rights Information Request for Medicare Certification Form
- B. Assurance of Compliance (HHS/690)
- C. Technical Assistance with Sample Policies