

Supporting Statement – Part A
Reporting Requirements and Corrective Action Plans Under
Section 1902(tt) of the Social Security Act
CMS-10875, OMB 0938-1462

Background

This 2024 iteration seeks to extend the expiration date for another three years without change.

Our December 6, 2023 (88 FR 84713) interim final rule with comment period (IFC) (CMS-2447-IFC (RIN 0938-AV26) requires that state Medicaid agencies report certain data elements to CMS on a regular basis as well as comply with all Federal eligibility redetermination requirements or be subject to new enforcement actions for noncompliance during the period of April 1, 2023, through June 30, 2024.

Current regulations at 42 CFR 435.916 outline the steps states must take to renew Medicaid eligibility for currently enrolled individuals. These regulations were finalized in the wake of the Patient Protection and Affordable Care Act and outlined new beneficiary-friendly requirements on states, including to check electronic data sources for information needed to conduct a renewal before asking the individual (*ex parte* renewal).

The Consolidated Appropriations Act, 2023 (CAA, 2023) added more requirements at Section 1902(tt) of the Social Security Act (the Act) for states to: 1) report certain data elements to CMS, and 2) meet additional conditions when renewing Medicaid eligibility, in order to keep receiving the temporary increased federal medical assistance percentage (FMAP) available under section 6008 of the Families First Coronavirus Response Act (FFCRA). It also gave CMS new authority to take corrective and enforcement action in cases where states fail to meet the above new requirements. These statutory changes were designed to help CMS in its oversight of states as they “unwind” from the Medicaid continuous enrollment condition and restart an unprecedented number of redeterminations while preventing unauthorized loss of coverage due to procedural reasons unrelated to an individual’s eligibility.

Section 435.927 outlines state requirements to submit certain data elements on eligibility redeterminations to CMS, and at § 435.928, which requires that for states that fail to meet the requirements at § 435.927 for any fiscal quarter during the compliance period, CMS will reduce the state’s FMAP. Finally, § 430.49 requires that when CMS finds that a state has failed to comply with the Federal redetermination requirements at § 435.916 as well as section 1902(tt)(1) of the Act, CMS may require a corrective action plan (CAP), and if the state fails to comply with the CAP requirement, CMS may take further enforcement action to require the state to suspend some or all procedural terminations and impose civil money penalties (CMPs).

This collection of information request does not include any collection of information instruments. Instead, all requirements are set out in the CFR.

A. Justification

1. Need and Legal Basis

The burden associated with this collection of information request arises from states reporting required data elements to CMS via alternate processes if they encounter challenges using the current methods and from developing and submitting a CAP when a state fails to follow Federal redetermination requirements.

Regulations at § 435.927 implements section 1902(tt)(1) of the Act, which requires that states: “submit to the Secretary, on a timely basis, a report, that the Secretary shall make publicly available, on the activities of the State relating to eligibility redeterminations conducted during such period, and which include, with respect to the month for which the report is submitted, the following information.”

Section 435.928 implements section 1902(tt)(2)(A) of the Act, which requires that: “if a State does not satisfy the requirements of paragraph (1), the Federal medical assistance percentage determined for the State for the quarter under section 1905(b) shall be reduced by the number of percentage points (not to exceed 1 percentage point) equal to the product of 0.25 percentage points and the number of fiscal quarters during such period for which the State has failed to satisfy such requirements.”

And § 430.49 implements section 1902(tt)(2)(B) of the Act, which requires that: “The Secretary may assess a State's compliance with all Federal requirements applicable to eligibility redeterminations and the reporting requirements described in paragraph (1), and, if the Secretary determines that a State did not comply with any such requirements during the period that begins on April 1, 2023, and ends on June 30, 2024, the Secretary may require the State to submit and implement a corrective action plan in accordance with clause (ii).”

The regulations describe processes to be used by states and CMS to demonstrate compliance with 1902(tt) and provides critical information for CMS to conduct oversight of procedural terminations as well as states’ ability to conduct renewals in accordance with Federal requirements.

2. Information Users

The data and information in the CAP that states are required to report is used by CMS to document that states’ redetermination activities are in compliance with Federal redetermination requirements at § 435.916 as well as section 1902(tt)(1) of the Act, to identify concerns with eligibility renewals within a state’s Medicaid program, and to inform any necessary programmatic changes to address unauthorized loss of coverage. CMS uses the information to conduct oversight of state activities and to make informed decisions whether to take enforcement action in the form of requiring the suspension of procedural terminations and/or imposing CMPs. While the data reported per section 1902(tt)(1) will be made public, the information in the CAPs will be used solely by CMS. The public, interested parties, and Congress will use the data to stay informed about states’ renewal activities.

3. Use of Information Technology

CMS anticipates that states will primarily use information technology to gather and submit the required data via alternate processes as well as to develop and submit a required CAP.

4. Duplication of Efforts

CMS has reviewed the available universe of information and determined that these collections are not duplicating any of our current collections. Recognizing that some States might encounter unusual circumstances that interfere with reporting the data that states are required to submit under § 435.927 using existing CMS-approved processes, CMS would consider approving alternative processes and timelines for States to report required data if a State is facing such circumstances and making a good faith effort to submit the required data, as specified in § 435.927(b)(4).

5. Small Businesses

CMS has determined that this information collection request does not have an impact on small businesses. Rather, the impact is on state governments.

6. Less Frequent Collection

If the information collection is conducted less frequently, states and CMS may have information that is insufficiently timely to determine if Medicaid renewals are being conducted in accordance with Federal redetermination requirements at § 435.916 as well as § 435.927, which may result in unauthorized loss of coverage due to procedural disenrollments. Analyses indicate that Medicaid coverage loss could have significant detrimental consequences for beneficiaries--resulting in forgone medical care, more emergency department visits, and increased morbidity and mortality—making timely and frequent reporting critical.

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

The 60-day notice published in the Federal Register on October 30, 2024 (89 FR 86340). Comments must be received by December 30, 2024.

9. Payments/Gifts to Respondents

No payments or gifts are made to respondents.

10. Confidentiality

The information collection includes certain Protected Health Information (PHI) from T-MSIS and the Federally facilitated exchanges (FFE) that are protected by safeguards outlined in two System of Records Notices (SORN) No. 09-70-0541 (Transformed-Medicaid Statistical Information System (T-MSIS): February 6, 2019, 84 FR 2230) and SORN 09-70-0560 (Health Insurance Exchanges (HIX) Program: October 23, 2013, 78 FR 63211).

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. Collection of Information Requirements and Associated Burden Estimates

Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2022 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/current/oes_nat.htm). In this regard, the following table presents the BLS' mean hourly wage, our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

National Occupational and Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Other Indirect Costs (\$/hr)	Adjusted Hourly Wage (\$/hr)
Database Administrators	15-1242	49.29	49.29	98.58
General and Operations Manager	11-1021	59.07	59.07	118.14
Management Analyst	13-1111	50.32	50.32	100.64
Project Management Specialists	13-1082	48.85	48.85	97.70

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 other indirect costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Cost to State Governments. To estimate State costs, it was important to take into account the Federal government's contribution to the cost of administering the Medicaid, CHIP, and BHP programs. The Federal government provides matching funds at a rate established in statute. All States generally receive a 50 percent federal matching rate for qualifying administrative activities. As noted previously, States also receive higher Federal matching rates for certain activities, such as certain systems design and development, and for maintenance and operations, so the level of Federal funding provided to a State can be significantly higher. As such, taking into account the Federal contribution to the costs of administering the Medicaid, CHIP, and BHP programs for purposes of estimating State burden with respect to collection of information, we elected to use a conservative estimate that the States would contribute 50 percent of the costs, even though the burden will likely be much smaller.

Collection of Information Requirements and Associated Burden Estimates

Reporting Requirements (§ 435.927)

Under § 435.927, States are required to submit certain monthly data to CMS about activities related to eligibility redeterminations conducted between April 1, 2023 and June 30, 2024. The data are already collected by States and reported to CMS under existing requirements that are approved by OMB under control numbers 0938-1119 (CMS-10371), 0938-0345 (CMS-R-284), 0938-1140 (CMS-10387), and 0938-1148 (CMS-10398 #64). However, recognizing that some States might encounter unusual circumstances that interfere with reporting using existing CMS-approved processes, CMS would consider approving alternative processes and timelines for States to report required data if a State is facing such circumstances and making a good faith effort to submit the required data, as specified in § 435.927(b)(4). For example, CMS would consider allowing States experiencing special circumstances to submit certain summary data via email rather than via T-MSIS, if T-MSIS is the existing process.

Based on CMS' ongoing work with States to report the required data, we estimate that 8 States will request that CMS approve an alternative process for submitting data under § 435.927(c)(2) during the compliance period of April 1, 2023, through June 30, 2024. We estimate that for each of the 8 States that request and receive approval to use an alternative process to submit required data, it will take a Project Management Specialist 8 hours at \$97.70/hr and a Database Administrator 15 hours at \$98.58/hr to develop an alternative process, reach agreement with CMS, and submit the required data. In aggregate we estimate a one-time burden of 184 hours (8 States x 23 hr/State) at a cost of \$18,082 [(\$97.70/hr x 8 hr x 8 States) + (\$98.58/hr x 15 hr x 8 States)]. Because the Federal government matches qualifying State Medicaid administrative expenditures at a rate of 50 percent, the estimated State share would be \$9,041 (\$18,082 x 0.50).

Corrective Action Plans (CAPs) (§ 430.49(b))

States would be required to submit a CAP to CMS if the State is out of compliance with the reporting requirements in section 1902(tt)(1) of the Act or Federal eligibility redetermination requirements (including any alternative processes and procedures approved by CMS, such as renewal strategies authorized under section 1902(e)(14)(A)) during the compliance period between April 1, 2023, and June 30, 2024.

Based on CMS’ ongoing work with States to unwind from the continuous enrollment condition, we estimate that 3 States will be out of compliance with data reporting requirements and 5 States will be out of compliance with Federal redetermination requirements during the compliance period of April 1, 2023, to June 30, 2024. Some States may be out of compliance with both sets of requirements and required to submit just one CAP addressing both issues, but for purposes of estimating State burden, we assume they are mutually exclusive sets of States for a total of 8 States. We also assume for purposes of estimating State burden that CMS will require a CAP from all of the 8 noncompliant States (and will not exercise its discretion not to require a CAP from any of them).

We estimate it will take a Management Analyst 20 hours at \$100.64/hr and a General and Operations Manager 8 hours at \$118.14/hr to write, clear, and submit a CAP that includes the criteria at § 430.49(b)(3). In aggregate we estimate a burden of 224 hours (8 States x 28 hr) at a cost of \$23,663 [(\$100.64/hr x 20 hr x 8 States) + (\$118.14/hr x 8 hr x 8 States)]. Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State share would be \$11,832 (\$23,663 x 0.50).

States can submit a CAP in their own format. CMS will not develop a template.

Summary of Annual Burden Estimates

One-Time Requirements and Burden Estimates

Regulation Section(s)	# of Respondents	# of Responses per Respondent	Time per Response (Hours)	Total Time (Hours)	Labor Cost (\$/hr)	Total cost (\$)	State Share (\$)
§ 435.927	8	1	23	184	varies	18,082	9,041
§ 430.49(b)	8	1	28	224	varies	23,663	11,832
Total	8	2	varies	408	varies	41,745	20,873

Collection of Information Instruments and Instruction/Guidance Documents

As indicated, there are no forms associated with the reporting requirements associated with § 435.927. Similarly, there are no templates associated with the CAP requirements under §

430.49(b).

13. Capital Costs

There are no estimated capital cost increases associated with this request. States may report the data and CAPs under the rule through existing capital resources.

14. Cost to Federal Government

Generally, the activities states will undertake to comply with the requirements are likely to be eligible for federal matching funds under 1903(a)(7) at a rate of 50 percent. This matching rate is accounted for in the estimates above at \$20,873.

15. Changes to Burden

Not applicable. This 2024 iteration seeks to extend the expiration date for another three years without change.

16. Publication/Tabulation Dates

CMS is required to publish the data reported by states periodically per section 5131 of the CAA, 2023.

17. Expiration Date

CMS will display the expiration date.

18. Certification Statement

There are no exceptions requested to the certification statements.